LAW AND CONTEMPORARY PROBLEMS

URBAN RENEWAL
Part I

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URBAN RENEWAL: PART I

ROBINSON O. EVERETT
Special Editor for this Symposium

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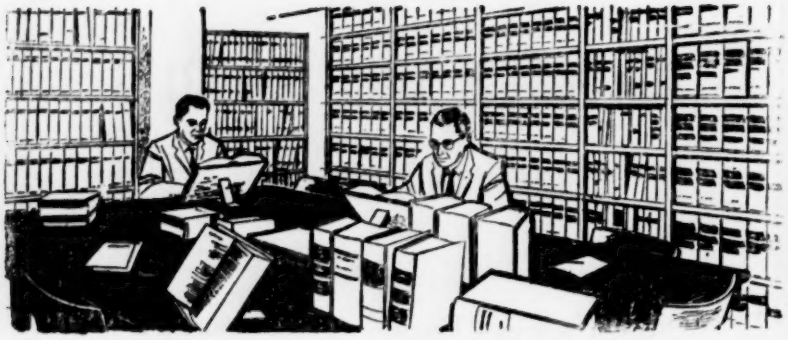

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LAW AND CONTEMPORARY PROBLEMS

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FOREWORD

Back in the days of the New Deal, when drastic social change was in progress and when *Law and Contemporary Problems* had its birth, the publication's second symposium dealt with low-cost housing and slum clearance.[1] Then, over a decade later and following World War II, which had pushed the housing shortage to crisis proportions, housing once again received symposium attention.[2] Seeking an even wider perspective, *Law and Contemporary Problems* subsequently published two symposia on land planning[3]—symposia which can be found today not only in law libraries and lawyers' offices, but also on city planners' desks throughout the country. Thus, there was ample precedent for a symposium on urban renewal—which would embrace not only housing, but all the other types of land use necessary for the maintenance and growth of American cities, and which would go beyond the problems and techniques of land planning into a consideration of relocation, disposition, and a host of other matters incident to executing even the best-laid plans.

The most proximate cause for organizing this symposium was undoubtedly my own appointment and service as Chairman of an Urban Renewal Commission. After taking office, I soon perceived that although some worthwhile articles on urban renewal have been published, and although a stream of bulletins and informational aids emanates from the Urban Renewal Administration, along with its less-than-constant *Manual*, a need existed for a comprehensive symposium on urban renewal. Of course, as an editor of *Law and Contemporary Problems*, I had little difficulty in finding a suitable candidate to publish the needed symposium—which was originally intended for only one issue but soon burgeoned into two.

The symposium appears at an especially opportune moment. More than a decade of experience has been accumulated with federal urban renewal legislation, and so there is now a basis for appraising realistically its strong and weak points. During this decade, some problems—such as the constitutionality of acquiring by eminent domain property that ultimately will be resold to private redevelopers—have largely been laid to rest; but new, often more subtle, problems are being discerned. More-

[1] *Low-Cost Housing and Slum Clearance*, 1 LAW & CONTEMP. PROB. 135-256 (1934).
[2] *Housing*, 12 LAW & CONTEMP. PROB. 1-205 (1947).
[3] *Land Planning in a Democracy*, 20 LAW & CONTEMP. PROB. 197-350 (1955); *Urban Housing and Planning*, *id.* at 351-529.

over, a new Administration, pledged to expand urban renewal, is just going into office and a new Congress is convening; perhaps some of the articles in this symposium will have an impact on the adoption and implementation of urban renewal policies by the new Chief Executive and by the legislators.

In many fields, large sums have been expended by private organizations and by the Government for research—prime examples being business expenditures for public opinion research and government expenditures for agricultural research, agricultural-testing stations, and the like. These expenditures presumably are designed to further utilization and preservation of important national assets. Few of our national assets are more important than America's cities and suburbs, where ever-increasing percentages of its citizens cluster to work, play, and dwell. Yet, the research in this area has, to a considerable extent, been neglected—perhaps because of a failure to recognize either the intellectual challenge involved or the crisis that now is confronted in the cities. Undoubtedly the present symposium will not serve of itself to loosen public and private purse strings for the purpose of financing urban renewal research; nor will it suffice to draw more scholars and administrators into this research field. However, by furnishing a useful tool for urban renewal study and discussion in seminars and classrooms in law schools, economics departments, schools of public administration, city-planning schools, and elsewhere, it may pave the way for the performance of fruitful new urban renewal research. At the same time, it can serve as an invaluable aid for those who already are on the battleline of day-to-day urban renewal administration and execution.

ROBINSON O. EVERETT.

A NEW PATTERN FOR URBAN RENEWAL

DAVID M. WALKER*

Urban renewal is a necessary concomitant of urban civilization. Since the forces which determine urban location tend also to perpetuate it, the ravages of time and the inadequacies of planning must be repaired by renewing the city instead of removing the population. But urban renewal does not regenerate cities pursuant to an immutable law. The forces of renewal do not inevitably prevail over the forces of decay. Archaeological investigation of ancient urban cultures reveals on the one hand successive efforts at renewal, while proving on the other that cities—even great ones—do not always survive.

Technology has marvellously increased our ability to deal with physical problems of environment. Yet the unsolved problems of modern urban living are so close about us we can reach out and touch a surfeit of them at any given hour. They are so familiar their recital would be trite. Urban renewal is the instrument designed to combine the forces of government with those of private enterprise for the resolution of these problems. It is a good instrument, susceptible of improvement but nevertheless capable of doing the job if we use it well.

There is growing recognition of the permanent or continuous nature of urban renewal. This program, improved in the light of experience by Congress, by state legislatures and city councils, and by those who administer it, should be just as much a part of municipal life as zoning, traffic engineering, or fire prevention—in fact, with our present urban problems and our present knowledge about their solution, we know that these other accepted facets of municipal government are not fully effective except in combination with urban renewal.

A recognition of the continuous nature of urban renewal should rest upon recognition of the basic reasons for its continuity. Fortunately, our ability to plan, at least to meet today's problems, has increased as our recognition of the value of planning has increased. Nevertheless, the creativity of individual ingenuity, which is one of the great benefits of a free society, will always outpace organized planning. Therefore, continuity in urban renewal does not mean increasing government intervention in property ownership; it means using the present urban renewal process, with government intervention held to a minimum, for the constant refurbishing and reshaping of our population centers to meet constantly changing circumstances.

At the present time, the city core is the center of the urban renewal effort. As the cities have grown outward into the suburbs, slum areas of the older central city have worsened and spread, creating an immediate need for the slum clearance

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aspects of the program. When urban renewal is viewed in the light of more recent legislation as an attack on the problems of the city as a whole, not just slum neighborhoods, the central city still requires immediate attention because of its age and because of its overriding importance to all inhabitants of the entire urban-suburban complex. And yet, if we can depend on history to teach us any lessons for tomorrow, we must conclude that inevitably the suburban rings around our central cities will be inadequate for, or incompatible with, twenty-first century living, and the urban renewal process will be moving into the suburbs before we are through with the central city. And then, unless we plan to abandon our cities, certainly before we are through with the suburbs, we will be back renewing the central city, if, indeed, we have ever discontinued there.

Urban renewal is just now falling into the pattern that it must adopt to meet the challenge of maintaining population centers compatible with the changes in modes of living. The program began with slum clearance in 1949.[1] The Housing Act of 1954[2] developed the concept of urban renewal, including rehabilitation, blight-prevention, and the concept of attacking on a broad front all of the city's housing problems as an integral part of urban renewal. As the meaning of this transition from a slum clearance to an urban renewal program became clear, in the Housing Act of 1959[3] the concept of a community-wide program was written into the law with the provision for a Community Renewal Plan.

In my opinion, as those engaged in urban renewal gain experience with community-wide planning under a Community Renewal Plan, there will develop, largely by administration but partly by legislation, a technique in urban renewal which at this reading must be called new. Cities will no longer have urban renewal projects. The city will have only one project, which will embrace the entire city. Cities will no longer requisition funds and make plans project by project. A city will proceed with its one large project for renewal, and will draw down periodic payments that will apply to the entire job against a budget that has been established for a ten- or twenty-year program.

A logical deduction from the consideration of urban renewal as a continuous process would be that the budgeted amount for a Community Renewal Plan would have certain characteristics of an open-end mortgage, being in effect more of a current estimate than a limitation on expense. This may well prove to be the case. However, the development of the Community Renewal Plan has enough immediate problems without borrowing further from the future. This reference to the Community Renewal Plan illustrates the fact about urban renewal that strikes me most forcefully: it is only beginning.

[1] 63 Stat. 413, 42 U.S.C. § 1441 (1958).
[2] 68 Stat. 622, 42 U.S.C. § 1450 (1958).
[3] 73 Stat. 672, 42 U.S.C.A. § 1453 (Supp. 1959).

FEDERAL URBAN RENEWAL LEGISLATION

ASHLEY A. FOARD* AND HILBERT FEFFERMAN†

This article outlines the early origins, the struggle for enactment, and the development of federal urban renewal legislation. It also discusses separately two of several major issues which recurringly give rise to changes in that legislation. One concerns restrictions in the federal law which direct federal urban renewal aids toward the betterment of housing, as distinguished from the betterment of cities and of urban life in general. The other concerns the statutory formula for apportioning the cost of the program between the federal government and local governments.[1]

Perhaps no one who reads this symposium would expect a major federal program such as urban renewal, even though it may be urgently needed and broadly supported, to be quickly formulated in detail adequate for enactment and swiftly enacted into law. A few might, however, underestimate the pitfalls and the time required. Some delays are inherent in the routine operations of the democratic legislative process, but the greatest delays in obtaining the enactment of legislation are to be expected when there are many diverse and important interests involved; and this may be true even after there is much agreement that the legislation's underlying purpose is good. The history of the basic federal urban renewal statute—Title I of the Housing Act of 1949[2]—was not exceptional in this regard. It involved very many diverse interests and extended over a period of many years.[3]

I

EARLY ORIGINS OF THE FEDERAL LAW

The major outlines of the 1949 legislation were distinctly visible in proposals

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The views expressed are those of the writers, who in no way purport in this article to speak for the Housing and Home Finance Agency.

[1] Current problems concerning compensation to those displaced by urban renewal activities for loss of property or for moving expenses and problems relating to the provision of housing for displaced persons are dealt with in other parts of this symposium.

[2] 63 Stat. 413, 414, 42 U.S.C. § 1441 *et seq.* (1958).

[3] Because the lengthy legislative history is crowded with many bills, hearings, and reports, this article will be burdened with many references and dates which are included largely to fill the needs of readers who may wish to consult the inadequately indexed primary sources. However, it is not possible within the space available to describe the history of detailed provisions of the law. Neither would it be very helpful, even if possible, to trace the basic provisions of the statute to the first person or persons who may have proposed them. As is so often true when problems are widely felt, similar solutions often occur at about the same time to many persons independently. The writers have not infrequently drafted laws to conform to legislative solutions hammered out in their presence, only to hear strangers later claim, obviously in good faith, to be the authors of the proposals. In some cases work, while unknown to the writers as draftsmen, had influenced their principals; and in other cases, work, though done earlier, had gone unnoticed when the legislation was written.

made as early as 1941.[4] *A Handbook on Urban Redevelopment for Cities in the United States,* published in November 1941, by the Federal Housing Administration, dealt with the problems of urban slums and blight and with the need for municipal rehabilitation and redevelopment. It recommended a planning agency for each city and also a corporate arm of local government to be known as a "city realty corporation" with broad powers to acquire, hold, and dispose of real property for redevelopment, including the power to acquire sites through eminent domain. This proposal contemplated the long-term leasing of tracts, before or after clearance of buildings, to privately-financed redevelopment corporations for construction in accordance with approved plans conforming to the master plan of the city. The possible need for federal financial aid to the community was suggested.

In December of the same year, 1941, a proposal conforming in more details to the federal urban redevelopment program as later authorized was made in an article, *Urban Redevelopment and Housing,* by Guy Greer and Alvin H. Hansen.[5] It opens with the following statement:

> With few exceptions, our American cities and towns have drifted into a situation, both physically and financially, that is becoming intolerable. Their plight, moreover, is getting progressively worse.

The authors listed as the two chief obstacles in the way of replanning by the cities and of rebuilding by private enterprise: first, the lack of adequate powers in local governments to control the use of land; and secondly, the frozen status of high land costs in slum and blighted areas. The following are features of their proposal for removing these two obstacles:

1. Federal loans or subsidies to communities for the elimination of slums and blighted areas, and technical aid to planning agencies of the communities.
2. Comprehensive state enabling legislation granting necessary powers to the city or a "special unit" of local government, especially to authorize the acquisition of land through eminent domain where necessary.
3. Requirements that the proposed redevelopment plan (i) be in accordance with

[4] Proposals for eliminating slums and blight were, of course, made much earlier. See, for example, the early suggestions made or referred to in the following publications: 3 THE PRESIDENT'S [HOOVER] CONFERENCE ON HOME BUILDING AND HOME OWNERSHIP ch. 1, app. VII (1932); Symposium, *Low Cost Housing and Slum Clearance,* 1 LAW & CONTEMP. PROB. 135-256 (1934); II JAMES FORD, SLUMS AND HOUSING chs. 27, 30, 35 (1956); Engle, *The British Housing Program,* 190 ANNALS 191 (1937); Keppler, *Housing in the Netherlands, id.* at 205; MABEL L. WALKER, URBAN BLIGHT AND SLUMS chs. 25, 28, 29 (12 Harvard City Planning Studies 1938). The earlier proposals are not reviewed here because they did not receive the direct attention of the congressional committees which considered urban redevelopment legislation, or because they relate to experience in other countries, or are not directed to federally-aided programs, or are not stated in much detail. Also, many earlier and detailed proposals for federal aid are not within the scope of this article because they approach the problem of eliminating slums and blight primarily through federal aid for low-rent housing construction, thereby conforming to the pattern of the United States Housing Act of 1937, rather than of the 1949 legislation. For example, in NATIONAL RESOURCES COMMITTEE, OUR CITIES—THEIR ROLE IN THE NATIONAL ECONOMY (1937), contrast the very general reference to cooperation by the federal government under the heading "Abolition of the Slum" (*id.* at 75) with the specific recommendations for federal action under the headings "Housing" (*id.* at 76) and "Six" (*id.* at xi).

[5] Published as a pamphlet by the National Planning Association.

a master plan for the community, and (ii) indicate the future use of each portion of the acquired area, whether to be used for public or private purposes.

4. Acquisition by local governments of land in slum and blighted areas with funds advanced from the federal government, as a step preliminary to demolition and redevelopment.
5. Use of land for redevelopment to be independent of acquisition cost to the community, and recognition that acquisition cost of slum and blighted areas would normally exceed the direct dollar return to the community for use of the land.
6. Repayment of federal advances, to the extent possible, from proceeds from use of the land, but recognition of need for federal loss of funds.
7. Provision of public works in relation to the undertaking.
8. Demolition and rebuilding or rehabilitation to proceed as rapidly as feasible.
9. The *quid pro quo* of federal financial aid should be the initiation by the urban community of a long-range program of replanning and rebuilding.

With one important modification, the first eight of these features are to be found in the federally-aided program as contemplated by the 1949 Act, and the ninth is strikingly similar to the requirement enacted in 1954 that the locality shall, in return for the federal aid, adopt a long-range "workable program" for dealing with its overall problem of slums and blight.

The major difference between the 1941 proposal and the 1949 Act relates to the type of federal subsidy. The Greer-Hansen proposal contemplated a subsidy, indefinite in amount, which would be made available over a long period of time.[6] This form of subsidy appears to be geared to the expectation (which Greer and Hansen shared with the authors of the 1941 FHA Handbook) that the land would normally be made available to private redevelopers under long-term leases, which would make the net loss on each project depend upon rentals paid over a long period of years. The 1949 Act, on the other hand, provided for a lump sum federal capital grant which would defray two-thirds of the net loss or "net project cost" as that

[6] Thus, it was suggested that federal advances for land acquisition might be repaid, with some interest, but only to the extent that this could be done by paying during a period of 50 years or so, something like two-thirds of the proceeds received by the municipality from leasing the land to redevelopers. See also three other suggestions described in Hansen, *Three Plans for Financing Urban Redevelopment*, appearing in *Hearings Before the Subcommittee on Housing and Urban Redevelopment of the Senate Special Committee on Post-War Economic Policy and Planning*, 79th Cong., 1st Sess. pt. 9, at 1622 (1945) [hereinafter cited as *Taft Subcommittee Hearings*]. One plan called for federal loans amortized over 100 years and bearing 1% interest, the federal subsidy consisting of the low interest rate. The city's general credit would be pledged to the repayment. A second plan called for full federal guaranties of tax-exempt revenue bonds sold by the city to private investors. Revenues would consist of income from leased project land, and to the extent that the revenues were inadequate for retiring the bonds, the difference would be contributed, two-thirds by the federal government and one-third by the local government. The third plan would simply obligate the city to repay federal advances, with 1% interest, utilizing revenues from leasing project land, the general credit of the city not being pledged. The federal "subsidy" would consist of the low interest rate and the high risk of loss.

Similar proposals for long-term loans (99 years) bearing very low interest rates, or even no interest, or for federal guarantees, were made by National Housing Administrator John B. Blandford, Jr., during these Hearings. *Taft Subcommittee Hearings*, pt. 4, at 1052, pt. 6, at 1305.

highly technical term is defined in the statute. Quite clearly, the act contemplates that the land would generally be sold to redevelopers in fee.[7] When this is done, the major actual receipts are known, and it is much easier, without excessive artificiality, to calculate the federal grant as a percentage of the "net project cost." Thus, the expectation that project land would generally be sold in fee tends to reinforce the use of a "capital grant" type of federal subsidy in preference to other forms of subsidy, payable over long terms.

On April 2, 1943, Senator Thomas of Utah introduced S. 953, Seventy-eighth Congress, which closely paralleled the Greer-Hansen proposal.[8] The bill would have provided for federal advances to municipalities for acquiring land to be redeveloped pursuant to local plans which had been federally approved. The advances were to be repayable, with two per cent annual interest, from rentals received by the municipality from leasing to private redevelopers project land not retained for public improvements. A later draft of the bill substituted a one per cent interest rate.[9] No federal grant was proposed, the federal "subsidy" consisting of the low interest rate and the risk of loss which would result from the indefinite period for repayment and from not pledging the general credit of the city to repayment. Also, federal advances which the bill would have authorized for preparing a master city plan and for planning specific redevelopment projects would apparently have been repayable only if a loan were later made for land acquisition. Senator Wagner of New York, on June 4, 1943, introduced, at the request of the Urban Land Institute, S. 1163, Seventy-eighth Congress, which would have provided for ninety-nine year federal loans to municipalities for land acquisition. The loans would have been repayable only from the proceeds of the lease or sale of the project land, with interest to be determined by the National Housing Agency.[10] Federal grants were to be limited to the locality's planning expenses.

The Thomas bill, while technically pending before the Senate Committee on Education and Labor, actually received instead the attention of the Subcommittee on Housing and Urban Redevelopment of the Senate Special Committee on Post-War Economic Policy and Planning.[11] Under the very active chairmanship of Senator

[7] The 1949 Act also makes provision for cases where all or some of the land will be leased. § 102(a) provides for "definitive" (long-term) federal loans which become necessary when the leasing of project land by the city eliminates or reduces sales proceeds available for immediate repayment of "temporary" federal loans. 73 Stat. 671 42 U.S.C. § 1452(a) (Supp. 1959). § 110(f) provides for imputing a value to land which is leased, this value being treated, for purposes of calculating the federal capital grant, as though it were sales proceeds. 73 Stat. 675, 42 U.S.C. § 1460(f) (Supp. 1959).

[8] Professor Hansen participated in the drafting, done largely by Alfred Bettman of Cincinnati, then Chairman of the Legislative Committee of the American Institute of Planners and also of the American Bar Association Committee on Planning Law and Legislation.

[9] Draft dated Dec. 10, 1943, printed for Committee use and reprinted in *Taft Subcommittee Hearings* pt. 9, at 1625.

[10] Predecessor of the present Housing and Home Finance Agency.

[11] This was so because clearly any new federal aid program involving the tearing down of many structures would have to await the winning of World War II. Meanwhile, many thought it important to formulate such a program in advance of the war's end so that it would be available to help take up an expected slack in economic activity while industry converted from war to peace production. In introducing his bill, Senator Thomas stated: "It is of the highest importance that, in the reconversion from

Taft, the Subcommittee conducted extensive and unusually searching hearings and studies between mid-1944 and mid-1945 on a very broad range of housing and urban development problems. Its report on *Postwar Housing*, dated August 1, 1945, and printed for the use of the full Committee, recommended:[12]

> The establishment, on a provisional basis, of a new form of assistance to cities in ridding themselves of unhealthful housing conditions and of restoring blighted areas to productive use by private enterprise.

The Subcommittee recommended that the National Housing Agency be authorized to undertake a program of loans and annual contributions to assist municipalities in acquiring and clearing slum or blighted areas and disposing of them through sale or lease for public or private purposes. Redevelopment would be in accordance with a plan for the specific project area and consistent with "a general guiding plan, prepared by an official local planning agency, for the clearance of all slums in the city." The federal annual contributions would be made for a period not exceeding forty-five years and would have the purpose "of covering the financial charges on the estimated or actual amount (whichever is the lesser) of the difference between (a) the total acquisition and demolition costs and (b) the recovery through sale or lease." The federal contributions would not exceed a fixed percentage of the financing costs involved. The municipality would be required to contribute an amount at least equal to one-half of the federal contributions, thereby in effect limiting the federal contributions to two-thirds of the net cost. The federal government would "retain the power of election to substitute a capital payment in lieu of its outstanding annual contributions commitment at any time." Federal loans for site acquisition and demolition would be authorized with maximum maturities of twenty years and at an interest rate not exceeding the "going rate" paid by the federal government on its own obligations.

The proposed federal aid formula parallels the program of loans and annual contributions for low-rent public housing authorized in the United States Housing Act of 1937.[13] Both included federal loans to the locality (at interest rates based on a "going rate" paid by the federal treasury) to cover capital outlays; federal annual contributions over long periods of time to help defray a major portion of net losses;

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a wartime to a peacetime economy and the absorption of labor and resources which will be released by the termination of the war, the public expenditures which will be made shall be placed in projects which are both socially useful and economically sound." Senator Thomas in no way implied that the proposed slum-clearance program was a temporary one for the postwar period, and Senator Wagner, in introducing his bill, denied that it was a "postwar" or "public-works" or "relief" or "pump-priming" bill. He emphasized that it was instead a program of federal aid for land development and redevelopment by private enterprise, and that the problem should be faced before the war is over in order for industry, finance, and state and local governments to be "ready to act when the war is over."

[12] See p. 23, para. (g), and pp. 17-19. The recommendation that the program be established "on a provisional basis" is explained in the report by the need for experimentation resulting from lack of information as to the size of the task, the extent of the losses to be incurred from acquiring, clearing, and disposing of land, and the amount and nature of the aid which should be provided by the federal government.

[13] 50 Stat. 888, 42 U.S.C. § 1401 (1958).

and local contributions to help defray a lesser portion of the net losses. Both programs also contemplated that there would be a definite upper limit on the federal contributions but that the assured federal contributions would be sufficient to make it possible to turn to the private market for a major share of the financing. Both also made provision for an alternate type of federal subsidy in the form of a lump-sum capital grant.[14] The similarities between the Taft Subcommittee's proposal and the 1937 Act are to a considerable extent traceable to experience under the 1937 Act. This is especially true of the proposal to make federal contributions over a long period of years. More important, however, are the basic underlying forces which shaped both the act and the proposal. The Subcommittee report stated that "an essential feature of any plan of Federal assistance should be provision for limiting the extent of the loss to be borne by the Federal Government and for sharing . . . costs by the municipality." The report also stated that the Subcommittee did not find in the testimony any proposals that fully conformed to these principles. Senator Taft, during the course of the hearings, had previously revealed by his questions and comments that he would oppose an indefinite subsidy such as that involved in a very low interest rate and that he would seek a federal assistance formula that involved some definite contribution from the local community or a state.[15]

In emphasizing the many similarities between the Taft Subcommittee's proposal and the United States Housing Act of 1937, it is important not to lose sight of the basic difference between the two. Whereas the 1937 Act was intended to help clear slums[16] through federal loans and annual contributions for the provision of

[14] In fact, this authority was not used under the 1937 Act, whereas it was later adopted as the sole form of basic subsidy under the 1949 Act.

[15] *Taft Subcommittee Hearings* pt. 9, at 1612, 1613.

[16] The title of the 1937 Act was "An Act to provide financial assistance to the States and political subdivisions thereof *for the elimination of unsafe and insanitary housing conditions, for the eradication of slums,* for the provision of decent, safe and sanitary dwellings for families of low income, and for the reduction of unemployment and the stimulation of business activity, to create a United States Housing Authority, and for other purposes." (Emphasis added.) The Act itself required the elimination by demolition, effective closing, or compulsory improvement of unsafe or insanitary dwellings in the locality substantially equal in number to the dwellings provided with the federal aid. Under earlier authority, the federal government itself constructed low-rent housing projects through the Housing Division of the Public Works Administration. These were known as low-cost housing and "slum clearance" projects. See authority in § 202(d) of the National Industrial Recovery Act, 48 Stat. 195, 201 (1933). The emphasis on slum clearance purposes in the public housing legislation was thought necessary in order to justify the taking of private property through eminent domain. The elimination of slums was considered to be more clearly a "public purpose" involving the public health than was the construction of low-rent housing. Some may regard it as a paradox that, while the slum clearance purpose was emphasized by the courts during the 1930's in cases upholding the taking of private land for public housing projects, these early housing cases (some involving slum clearance only indirectly) were sometimes the decisive factor during the 1950's in obtaining judicial approval for the taking of land by a city for purposes of direct slum clearance and private redevelopment.

See also § 201(a)(2) of the Emergency Relief and Construction Act of 1932, 47 Stat. 709, 711, under which the Reconstruction Finance Corporation was authorized "to make loans to corporations formed wholly for the purpose of providing housing for families of low income, or for reconstruction of slum areas, which are regulated by State or municipal law as to rents, charges, capital structure, rate of return, and areas and methods of operation, to aid in financing projects, undertaken by such corporations which are self-liquidating in character." One such loan financed a large privately-owned rental housing project (Knickerbocker Village) built on a slum-cleared site in New York City.

low-rent housing, the new proposal contemplated that the federal subsidy would be addressed directly to the loss from assembling, clearing, and disposing of the land, with "the same degree of assistance" being given regardless of the type of redevelopment.

Another recommendation by the Subcommittee foreshadowed a significant provision of the 1949 Act. The Subcommittee recommended that in estimating the municipality's contribution, credit be given not only for the value of land transferred to the project and the cost of streets, public utilities, and other site facilities incident to the project, but also for expenditures on "public buildings made necessary by the project." Finally, the Subcommittee contemplated, as does the 1949 Act, that land would be disposed of through sale or lease, whereas many earlier proposals were predicated on leasing as the normal, or even sole, method of disposal.[17]

II

THE STRUGGLE FOR ENACTMENT

The history of the specific legislation which became Title I of the Housing Act of 1949 begins in 1945 in the Seventy-ninth Congress. The bill which was enacted in 1949 was one of a long series of companion or rival bills which successively and almost continuously received the attention of the Banking and Currency Committees of the House and Senate during three Congresses. On August 1, 1945, Senator Wagner of New York, for himself and for Senator Ellender of Louisiana, introduced S. 1342, Seventy-ninth Congress. Its urban redevelopment provisions very closely followed the recommendations of the Taft Subcommittee report, which was dated that same day. On November 14, S. 1592, Seventy-ninth Congress, containing similar provisions, was introduced as a substitute bill by Senator Wagner of New York, for himself and Senators Ellender and Taft. Senators Wagner and Ellender had served on the Taft Subcommittee; Senator Wagner was also Chairman of the regular Committee on Banking and Currency to which S. 1592 was referred; and Senator Taft was the second ranking minority member of that Committee.

Title VI of the bill was headed "Land Assembly for Participation by Private Enterprise in Development or Redevelopment Programs." Other titles of S. 1592 provided for the establishment of a permanent national housing agency; a housing research program; grants to localities for urban planning; substantial changes in the operations of the Federal Home Loan Bank Board and the Federal Savings and

[17] During the hearings, Alfred Bettman testified that the leasing policy embodied in Senator Thomas's bill was "debatable" and "should perhaps be changed so as to permit sales." He stated: "While there is much to be said in favor of a lease land tenure policy as promotive of the stabilizing of the plans upon which the Federal aid would be based, nevertheless the time may not have as yet arrived for the adoption of that policy." Other proponents of leasing may have been motivated not only by the tighter municipal control over land use, but also by the possibility of capturing for the municipality long-range increases in land value, thereby offsetting losses due to clearance. However, members of the Subcommittee apparently felt that neither of these considerations warranted a displacement of private ownership and control (subject to restrictions in the redevelopment plan) over large areas of urban real property. In any event, it was felt that a federal law should certainly not be written so as to preclude the municipality from selling project land. *Taft Subcommittee Hearings* pt. 9, at 1611.

Loan Insurance Corporation; extensive changes in the mortgage insurance operations of the Federal Housing Administration, including special programs for moderate income families and for cooperative housing; a new program under which the FHA would insure the annual yield on mortgage-free private investment in rental housing projects; the disposition of federally-owned war housing; a new program of loans and grants by the Secretary of Agriculture for farm housing; and authorization over a period of years for 500,000 additional low-rent public housing units. Many of these proposals were highly controversial. During the sixteen days of committee hearings held between November 27, 1945, and January 25, 1946, especially bitter opposition was expressed by the home-building, mortgage-lending, and real estate industries to the proposed enlargement of the low-rent public housing program. While more narrowly based, there was equally vigorous opposition to many other provisions of the bill. For example, the savings-and-loan segment of the mortgage-lending industry objected strongly to the inclusion of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation as subordinate agencies in the proposed permanent National Housing Agency. Although more than a little criticism was directed at the urban redevelopment title, it was clear to observers at the hearings that this title was not generating really heated objections. Indeed, the National Association of Real Estate Boards and the United States Savings and Loan League endorsed the principle of federal aid for slum clearance and urban redevelopment, while objections expressed by the National Association of Home Builders and the Mortgage Bankers of America were stated rather mildly.[18]

[18] A representative of the National Association of Real Estate Boards (which had once itself proposed federal loans for urban redevelopment) suggested that the enactment of federal aid for slum clearance and private redevelopment would enable private enterprise to do the job that public housing was supposed to do. He also testified as follows: "The National Association of Real Estate Boards strongly favors a program for urban redevelopment. . . . We would want to see legislation that would assure local control of the projects from start to finish, and Federal financial assistance made in lump sum grants on a 50-50 matching basis for land assembly purposes. . . . We favor putting the Federal contribution into an outright grant, because in that way you know exactly what it will cost the United States Treasury. . . . The annual contribution is vicious, also, in that it insures Federal domination of the municipality." *Hearings Before the Senate Committee on Banking and Currency on S. 1592, General Housing Act of 1945*, 79th Cong., 1st Sess. 454-55, 480-81 (1945-46). It is true that the Association by 1947 had reversed its position and opposed federal aid for urban redevelopment. *Hearings Before the Senate Committee on Banking and Currency on S. 866 Housing*, 80th Cong., 1st Sess. 345, 363, 368 (1947). However, the main grounds for the objection at that time seemed to be that state and local aids were sufficient for such a program and that large-scale redevelopment was not likely while housing conditions were tight. By 1949, even these objections by the Association were weakened when its representative, in opposing enactment of Title I of the Housing Act of 1949, stated that he was "not necessarily" opposed to federal money for slum clearance by local redevelopment agencies, but that he was opposed to Title I "as presently written." On the same occasion, another representative of the Association, when pressed for the grounds of his objections to Title I, referred to a provision for developing "open urban land" and stated "that is our objection to the bill." *Hearings Before the Senate Committee on Banking and Currency on S. 138, General Housing Legislation*, 81st Cong., 1st Sess. 411, 413 (1949). By 1954, the Association had come a long way around toward its original position, expressing approval of the Title I program if major emphasis were placed on conservation and rehabilitation, with clearance being focused on the very worst slum pockets that cannot be rehabilitated. *Hearings Before the Senate Committee on Banking and Currency on S. 2889, Housing Act of 1954*, 83d Cong., 2d Sess. 440-41 (1954).

Testimony presented on behalf of the United States Savings and Loan League included the following statements: "Our people have studied the problem of slum clearance for some years and agree that it

The omnibus bill was reported by the Senate Banking and Currency Committee on April 8, 1946, with many amendments, but with its major proposals retained.[19] Despite the widespread opposition, chiefly flowing from trade associations, but with vigorous support for the bill from many professional, municipal, religious, and labor organizations,[20] the bill was passed by the Senate on April 15, 1946 with overwhelming bipartisan support. There was no record vote, but during the voice vote, observers in the gallery noted that, in a well-attended chamber, not a single senator voted against final passage.

The opposition made itself far more strongly felt in the House, where opponents of the more controversial features were able to gain the support of many representatives from rural districts. Opponents of the Wagner-Ellender-Taft bill in the House rallied around a rival bill, H.R. 6205, Seventy-ninth Congress, introduced on April 18, 1946, by Representative Wolcott of Michigan, ranking Republican member of the House Committee on Banking and Currency. His bill, unlike the Senate bill, made no provision for a permanent over-all housing agency, additional low-rent public housing, special FHA mortgage insurance aids for moderate-income families and cooperatives, FHA yield insurance on rental housing, and farm housing aids. However, the Wolcott bill did propose a federal urban redevelopment program, perhaps in recognition of the fact that this was a far less controversial proposal than those

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is an appropriate field for public action and public expenditure. We have felt that the procedure could be carried out largely by local governments and that, after the land so acquired was written down to a reasonable use value, it should be used for its highest and best use, public or private. We have clearly felt that it should not be used exclusively for public housing. We think it is appropriate for the Federal Government to furnish money to be used along with funds of States and municipalities for such land assembly in the slum areas of our cities." Criticisms of the provisions were addressed to matters of detail. The League testified that the provisions were unnecessarily complex; that the proposed annual contributions "involve a complicated and expensive approach" and that the transaction "could better be handled by direct grants at the outset"; and that the law should make it completely clear that land could be redeveloped for other than public housing purposes and that local public housing authorities would not necessarily administer the program locally. *Hearings Before the Senate Committee on Banking and Currency on S. 1592, General Housing Act of 1945*, 79th Cong., 1st Sess. 837-38, 844-45 (1945-46).

The President of the National Association of Home Builders testified against "Federal subsidies for public housing and slum clearance" in S. 1592, but, except for reference to the funds involved, his entire discussion was directed to the public housing provisions and not to the slum clearance provisions. *Id.* at 599-602. Testimony which was offered against the slum clearance provisions of S. 1592 on behalf of the Mortgage Bankers of America consisted of the following relatively mild objection: "We cannot say that these provisions are the best answer to this important problem. We believe, however, that the expenditure of federal funds *at this time* is inflationary and inopportune." *Id.* at 404-05. (Emphasis added.)

[19] Senate Comm. on Banking and Currency, *General Housing Act of 1946*, S. REP. No. 1131, 79th Cong., 2d Sess. (1946). The report contains both a brief summary and a detailed section-by-section analysis of the bill as reported. (The bill was debated in the Senate on April 11 and 15, 1946.)

[20] Organizations supporting the bill included the American Association of Social Workers, American Association of University Women, American Federation of Labor, American Public Health Association, American Veterans of World War II (AMVETS), Congress of Industrial Organizations, Federal Council of Churches of Christ in America, National Association of Housing Officials, National Board of the Young Women's Christian Association, National Catholic Welfare Council, National Conference of Catholic Charities, National Council of Jewish Women, National Institute of Municipal Law Officers, United States Conference of Mayors, and Veterans of Foreign Wars of the United States.

excluded from the bill.[21] Although the proposal differed greatly from that in the Senate bill, it gave support to the principle that substantial federal aid was warranted for this purpose. Thus, the Wolcott bill would have authorized the Reconstrucion Finance Corporation to make $1 billion of federal loan funds and $1 billion of federal capital grants available to localities for slum clearance projects. The major difference in the federal formula under the two bills was that federal grants under the Wolcott bill would have been limited to one-half, rather than two-thirds, of the net project cost.[22]

Hearings on general housing legislation were scheduled in the House Committee on Banking and Currency on June 28 and 29, and on July 1, 3, and 5, 1946. On each occasion, the Committee adjourned on a point of order raised by opponents of the Wagner-Ellender-Taft bill on the grounds that the House was in session. The House hearings were neither completed nor published, and the Seventy-ninth Congress adjourned on August 2, 1946, without the bill having reached the floor of the House. This was only the beginning of a long series of similar disappointments to be suffered by the sponsors of general housing legislation and of federal aid for urban redevelopment.

A successor bill, S. 866, was introduced in the Eightieth Congress on March 10, 1947, by Senator Taft, for himself and Senators Ellender and Wagner, and came to be known as the Taft-Ellender-Wagner bill. Its urban redevelopment provisions did not differ much from those in S. 1592.[23] S. 866 was reported by the Senate Banking and Currency Committee in April, 1947 after hearings during March and April.[24]

The battle lines which had formed in 1945 and 1946 around the Wagner-Ellender-Taft bill shifted very little during 1947, 1948, and the first six months of 1949, as the Taft-Ellender-Wagner bill was considered, modified, and superseded by other comprehensive housing bills. The intensive legislative battles during this entire period involved no important new positions, even though many skirmishes were fought over new terrain under new leaders utilizing new tactics. For example, the terrain was changed when a special Joint Committee on Housing was appointed in July 1947 to make a new study and investigation of housing. Its Chairman, Representative Gamble of New York, and its Vice Chairman, Senator McCarthy of Wisconsin, opposed many of the important provisions in the Wagner-Ellender-Taft bill. The Committee held very extensive hearings from September 1947 through January 1948,

[21] Senator Ellender recognized this fact when he inserted in the *Congressional Record* twelve questions and answers which were later printed as a pamphlet, *Objections to the Wagner-Ellender-Taft Bill Are Not Valid*. Not one of the questions or objections was addressed to the urban redevelopment program. See 92 CONG. REC. 3699 (1946).

[22] Perhaps a motive for assigning the program to the RFC was to avoid giving aid and comfort to the proponents of a permanent national housing agency.

[23] A detailed comparison of the two bills appears in Part 6 of a pamphlet prepared by the Legislative Reference Service of the Library of Congress for the use of the Senate Committee on Banking and Currency, THE GENERAL HOUSING BILL—ARGUMENTS FOR AND AGAINST SENATE BILL 1592, 80TH CONG., 1ST SESS. (Comm. Print 1947).

[24] Senate Comm. on Banking and Currency, *National Housing Commission Act*, S. REP. No. 140, 80th Cong., 1st Sess. (1947).

while proponents of comprehensive housing legislation charged that this was a delaying tactic by the Chairman and Vice Chairman. However, a majority of the Committee did in fact favor the Taft-Ellender-Wagner bill, and its Final Majority Report of March 15, 1948, reflected that fact.[25] Here again, urban redevelopment proposals were not the subject of major differences of opinion concerning basic principles.[26]

Amendments to conform S. 866 to the recommendations of the Joint Committee were introduced by Senator Flanders of Vermont, simultaneously with the publication of the final report of the Joint Committee on March 15. Hearings on these amendments were held on March 31 and April 1 by the Senate Banking and Currency Committee, and the amendments were reported on April 8.[27] They included a number of significant changes in the urban redevelopment provisions.[28] The most noteworthy from a long-range viewpoint was the change from a system of federal annual contributions for slum clearance to a system of capital grants. This change had been recommended during the hearings in the Seventy-ninth Congress by the National Association of Real Estate Boards and the United States Savings and Loan League.[28a] During the Eightieth Congress, it was concurred in by the Housing Administrator, who stated: "This seems to be a desirable improvement, since the amount of the subsidy necessary would become fixed when the land in a project area had been assembled, cleared, and sold or leased for redevelopment, and there would not appear to be any possibility of savings to the Government through the use of a system of annual contributions. Further, of course, Senator Flanders' amendments . . . would reduce very substantially the period when substantial Federal supervision of project accounts and revenues would be required."[29] Another change was the new requirement that the Housing Administrator, in extending financial aid under the urban redevelopment title, "give consideration" to the extent to which the locality has undertaken a program to encourage housing cost reductions through the adoption and improvement of building and other local codes.[30]

The Senate debated the bill at great length and passed it by voice vote on April

[25] Joint Comm. on Housing, *Final Majority Report, Housing Study and Investigation*, H.R. REP. No. 1564, 80th Cong., 2d Sess. (1948).

[26] *Compare* Joint Comm. on Housing, *Housing Study and Investigation*, S. REP. No. 1019, 80th Cong., 2d Sess. 6-7, 18, 20 (1948), *with* Joint Comm. on Housing, *Final Majority Report*, H.R. REP. No. 1564, 80th Cong., 2d Sess., at 24-25 (1948) (individual views of Senator McCarthy).

[27] Senate Comm. on Banking and Currency, *Housing Act*, S. REP. No. 140, 80th Cong., 2d Sess. pt. 2 (1948).

[28] See Senate Comm. on Banking and Currency, *Housing Act*, S. REP. No. 140, 80th Cong., 1st Sess. pt. 2 (1948), for a section-by-section analysis of S. 866 as reported in 1948; a comparison with the legislative recommendations of the Joint Committee on Housing; and a comparison with the bill as previously reported in 1947. See also *Hearings Before the Senate Committee on Banking and Currency on Perfecting Amendments to S. 866*, 80th Cong., 2d Sess. 179-81 (1948), for the Housing Administrator's analysis of the changes in the urban redevelopment provisions.

[28a] See *Hearings*, *supra* note 18.

[29] *Hearings Before the Senate Committee on Banking and Currency on Perfecting Amendments to S. 866*, 80th Cong., 2d Sess. 180 (1948).

[30] This was a forerunner of the so-called "workable program" requirement of the 1954 legislation referred to below.

22, 1948, again with overwhelming bipartisan support.[31] It nevertheless died in the Eightieth Congress after extensive hearings by the House Banking and Currency Committee between May 3 and June 8; the collection meanwhile of about 120 signatures on a petition by members of the House to discharge that Committee of further consideration of the bill so that it could be brought to an early vote on the floor; the introduction by Chairman Wolcott on June 8 of H.R. 6841, a substitute bill which did not contain public housing, slum clearance, and farm housing provisions; a fourteen-to-thirteen vote within the Committee on June 10 to restore the omitted provisions in the form in which they appeared in the Taft-Ellender-Wagner bill; the introduction on June 11 by Chairman Wolcott, at the request of the Committee, of H.R. 6888, a clean bill, containing those provisions, which was reported three days later;[32] the tabling of the bill by the House Rules Committee on June 16; the introduction, reporting,[33] and passage by the House[34] on June 16, 17, and 18, respectively, of Chairman Wolcott's new bill, H.R. 6959, which omitted these provisions; the adjournment of the Congress for the 1948 national political conventions shortly after Senator Ellender, with the support of Senator Tobey, objected on June 19 to a unanimous consent request for the consideration of the House-passed bill; a special congressional session which started July 26, and which was called by the President primarily for the consideration of the Taft-Ellender-Wagner bill and of legislation "to check inflation";[35] the reporting of H.R. 6959 by the Senate, amended so that it was in substantially the same form as the Taft-Ellender-Wagner bill;[36] the reluctant passage of that bill by the Senate after a floor amendment had removed the public housing, slum clearance and farm housing provisions;[37] and the reluctant approval by the President of the Housing Act of 1948 without these major provisions.[38]

[31] Along with Senators Taft and Ellender, active supporters of the bill included Senator Tobey of New Hampshire, Chairman of the Banking and Currency Committee during the Republican Eightieth Congress and a member of the Joint Committee on Housing; Senator Flanders of Vermont, Republican member of both Committees and sponsor of the 1948 amendments to the bill; Senator Maybank of South Carolina, member of the Banking and Currency Committee during the Eightieth Congress and its Chairman in the following Democratic Congress; and Senator Sparkman of Alabama, a member of both Committees and Chairman of the Housing and Rents Subcommittee of the Banking and Currency Committee during the Eighty-first Congress. The bill was debated in the Senate on April 14, 15, 20, 21, and 22, 1948.

[32] House Comm. on Banking and Currency, *Housing Act of 1948*, H.R. REP. No. 2340, 80th Cong., 2d Sess. (1948).

[33] House Comm. on Banking and Currency, *Housing Act of 1948*, H.R. REP. No. 2389, 80th Cong., 2d Sess. (1948).

[34] Under suspension of the rules, with no amendments allowed.

[35] The President's Proclamation No. 2796, July 15, 1948, 13 FED. REG. 4057 (1948), and Address by the President before a Joint Session of the Senate and the House of Representatives, *Urgent Needs of the American People*, H.R. Doc. No. 734, 80th Cong., 2d Sess. (1948).

[36] Sen. Comm. on Banking and Currency, *National Housing Act*, S. REP. No. 1773, 80th Cong., 2d Sess. (1948).

[37] The Senate debate on August 5 and 6, 1948, made it abundantly clear that the Senate had reluctantly omitted these provisions only because there was insufficient time, prior to the 1948 presidential elections, to overcome the parliamentary hurdles which a minority of the membership of the House of Representatives would certainly place in the way of the broader legislation.

[38] Pub. L. No. 901, 80th Cong., 2d Sess. (Aug. 10, 1948), and accompanying statement by the President.

The considerations[39] which led to the omission in mid-1948 of urban redevelopment provisions from House-originated legislation were different from those which led to the omission of public housing and farm housing provisions. The public housing provisions continued to be the target of uncompromising attack, and the farm housing provisions were often characterized as wrong in principle. The urban redevelopment provisions, however, continued to escape direct attack from most of the opponents of the Taft-Ellender-Wagner bill, although latent or disguised general opposition was evident in some of the objections to matters of detail and in the fact that the provisions were omitted entirely when an unusually good opportunity to do so presented itself. The opportunity in mid-1948 for jettisoning the urban redevelopment proposal consisted of the pressure to enact, prior to the 1948 presidential elections, noncontroversial provisions for the encouragement of private housing construction during a period of severe housing shortage. This shortage had led to the inclusion in the Taft-Ellender-Wagner bill, as reported to the Senate in April 1948, of provisions postponing the purchase of any urban-redevelopment-project land until July 1, 1949, and also postponing the demolition of any residential structures on such land until July 1, 1950. In the light of these provisions, members of Congress motivated by some degree of opposition to the program were able to contend that no great harm would result from delaying enactment of the provisions until early in 1949, while substantial harm could result from the failure to enact a "half-loaf" measure. Some proponents of the urban redevelopment provisions countered that enactment was necessary in 1948 in order for land acquisition to be possible by July 1, 1949; but other proponents, recognizing that the housing shortage was not (as contemplated by the postponement provisions in their bill) likely to disappear by the summer of 1950, were willing to overlook the mote in the eye of the opposition in view of the beam in their own.

The Eighty-first Congress convened on January 3, 1949, and two days later witnessed an apparent breach in the Senate's record of bipartisan cooperation in the field of housing when Senator Ellender, for himself, Senator Wagner, and six other Democratic Senators introduced S. 138, a comprehensive housing bill which consisted substantially of the unenacted parts of the Taft-Ellender-Wagner bill.[40] A roughly

[39] Evidence of these considerations may be found both in the Senate debate of August 5 and 6, 1948 and in a report (Special Subcomm. of the Senate Comm. on Banking and Currency, *Housing Act of 1948*, S. Doc. No. 202, 80th Cong., 2d Sess. (1948)) which was made on August 7 to the Senate Committee on Banking and Currency by three of its members who were designated by the Chairman to confer informally with members of the House of Representatives concerning housing legislation which could be enacted during the special session of Congress.

[40] A section-by-section summary of S. 138, 81st Cong., 1st Sess. (1949), and a list of the major differences between it and S. 866, as passed by the Senate in the Eightieth Congress, may be found in 95 CONG. REC. 48-55 (1949). Among these differences were a proposed reduction in the maximum maturity of the federal urban redevelopment loans from 45 to 40 years; a new provision for federal loans for surveys and plans in preparation of urban redevelopment projects; and a new provision under which the President could, within prescribed limits, accelerate the availability of the $500 million urban redevelopment capital grant authorization which would otherwise become available in five equal annual installments.

similar[41] bill, S. 709, was introduced on January 27 by Republican Senator Baldwin of Connecticut for himself, Senator Taft, and fourteen other Republican Senators, thereby making up in numbers what they had lost in time, and revealing the continued presence of bipartisan support, though not cooperation. After the Senate Banking and Currency Committee had held hearings on these and other housing bills during most of February, the Committee was prepared to report out a compromise bill.[42] Accordingly, in a symmetrical flourish of resumed cooperation, S. 1070, Eighty-first Congress, was introduced on February 25 under the joint sponsorship of eleven Democratic and eleven Republican Senators, including Senators Ellender, Wagner and Taft, and was reported to the Senate that same day.[43] The bill was passed by the Senate on April 21 by a roll call vote of fifty-seven to thirteen. The opposition was led by Senators Bricker of Ohio and Cain of Washington, both of whom spoke chiefly against the public housing provisions.[44] Senator Bricker apparently expressed the prevailing views of opponents in both the Senate and the House when he stated: "I am in favor of the slum elimination section. I am opposed to the public housing section. I favor the research section, and I am opposed to the farm housing section."[45]

In the meantime, Representative Spence of Kentucky, Chairman of the House Committee on Banking and Currency, had on April 4, 1949, introduced a comprehensive housing bill, H.R. 4009, Eighty-first Congress. The Committee held hearings during April and the early part of May and then, during three days of executive sessions, adopted many amendments designed to reduce the number of differences between the House bill and the Senate-passed bill. On May 16, H.R. 4009 was reported by a vote of fourteen to seven.[46]

[41] The most talked about difference between the Democratic and Republican bills was in the number of low-rent public housing units authorized—1,050,000 in the former and 600,000 in the latter. In the urban redevelopment provisions, the differences were minor, with the Democratic bill providing for 40-year maximum federal loans as against 45 years in the Republican bill and with other differences relating to merely temporary provisions governing the dates when land purchases and demolition could begin.

[42] The compromise consisted in large part of an 810,000 unit public housing authorization, as against either 1,050,000 or 600,000.

[43] Senate Comm. on Banking and Currency, *Housing Act of 1949*, S. REP. No. 84, 71st Cong., 1st Sess. pt. 7 (1949), and *id.* pt. 2 (section-by-section summary) (March 11, 1949). The Committee adopted the S. 138 provision which imposed a 40-year maximum on federal loans for urban redevelopment projects.

[44] See Senate debate on April 14, 19, 20, 21, 1949. A series of floor amendments to the bill were defeated by the Senate. These included an amendment by Senator Bricker to strike out the public housing and farm housing titles. They also included a series of eight amendments to the public housing title offered by Senator Bricker, either alone or with Senator Cain, which would have crippled or severely limited that program. In contrast, the only limiting amendment to the urban redevelopment provisions offered by the two Senators was one which would have required the Housing Administrator to obtain loan funds through the appropriations process, instead of by borrowing directly from the Treasury.

[45] 95 CONG. REC. 4852 (1949). Compare the House debate on H.R. 4009, 81st Cong., 1st Sess. (1949), 95 CONG. REC. 8128-67, 8223-69, 8341-84, 8451-82, 8534-60, 8615-87 (1949).

[46] See House Comm. on Banking and Currency, *Housing Act of 1949*, H.R. REP. No. 590, 81st Cong., 1st Sess. (1949). Again, public attention was directed chiefly to the low-rent housing provisions, H.R. 4009 having proposed 1,050,000 dwelling units over a period of years instead of 810,000 units as in the

On June 7, the House Rules Committee voted seven to five to table the bill. Its opposition, as the year before, was centered on the public housing provisions. However, earlier actions taken by that Committee to block floor consideration of bills (such as the Taft-Ellender-Wagner bill) which had strong majority support in the House as a whole had led to the adoption of simplified procedures, which were in effect during the Eighty-first Congress, for bringing a bill to the floor of the House without the concurrence of the Rules Committee. Under threat of resorting to these procedures, proponents of H.R. 4009 persuaded the Rules Committee to reverse itself, and on June 16, the Committee voted eight to four to send the bill to the floor of the House.

The House debated the bill for several days, starting on June 22. As expected, the major attack was on the low-rent public housing provisions, which were narrowly sustained by a roll call vote of 209 to 204.[47] The entire bill was then passed on June 29 by a vote of 227 to 186.[48]

At no time during the debate were the urban redevelopment provisions seriously endangered. Representative Cole of Kansas (later to become the Housing Administrator and a strong proponent of urban redevelopment) offered an amendment to prohibit federal aid for urban redevelopment in any fiscal year unless the Secretary of the Treasury has estimated that the federal government's income for the year would not be less than its expenditures. This amendment was defeated by a division vote of 133 to 106.[49] Representative Phillips of California offered an amendment which would have required urban redevelopment loan funds and public housing annual contributions to be specifically authorized by Congress in appropriation acts before the federal government could enter into contracts to provide these forms of assistance. This amendment was defeated by a division vote of 131 to 119.[50]

Congressional action on the bill was completed on July 8, when the House and Senate each approved the Conference Report[51] resolving the few remaining differ-

Senate-passed bill. Differences in the urban redevelopment title between the House-reported and Senate bills were very minor, except that the House bill did not contain a provision, which had been added to the Senate bill by a floor amendment, requiring a public hearing prior to land acquisition by the local public agency. This difference was later eliminated by a House floor amendment which added a similar requirement to the House bill.

[47] Roll Call No. 117, 95 CONG. REC. 8667 (1949). Prior to this vote, the House, sitting as a Committee of the Whole House, had approved an amendment offered by Chairman Spence to reduce the public housing authorization to 810,000 units, the same number proposed in the Senate-passed bill (95 CONG. REC. 8623-36 (1949)). However, the technical effect of the roll call vote was to retain in the bill as passed the 1,050,000 unit authorization proposed in the bill as introduced and reported.

[48] Roll Call No. 120, 95 CONG. REC. 8677 (1949). See also Roll Call No. 119, *ibid.*, rejecting a motion to recommit the bill and to substitute other legislation which included urban redevelopment, but not public housing, provisions. The bill was debated on June 22, 23, 24, 27, 28, and 29.

[49] 95 CONG. REC. 8548 (1949).

[50] *Id.* at 8549. Similar proposals in the field of housing and urban renewal have been made from time to time by the Eisenhower Administration.

[51] Committee on Conference, *Conference Report on Housing Act of 1949*, H.R. REP. No. 975, 81st Cong., 1st Sess. (1949). The bill number was S. 1070, the House having inserted the text of H.R. 4009 as approved by the House after the enacting clause of S. 1070 as previously passed by the Senate. The differences confronting the conferees were relatively minor, as a practical matter, because the House

ences between the two chambers. The Housing Act of 1949 was approved by the President on July 15, thereby ending a four-year struggle for enactment. During the history of this legislation, the major change in the basic proposal was the substitution of federal short term loans and capital grants, in connection with cleared land which would generally be sold by the local public agency, for long-term loans and annual subsidies payable over a long period of years, in connection with land which would generally be leased.

A number of factors had contributed to the length and intensity of the struggle. The most basic was that the opposing forces outside Congress were both highly influential and firmly committed to their positions. Organizations supporting the omnibus legislation included many civic, professional, municipal, religious, veteran, and labor organizations.[51a] Often, when legislative support is so widespread, it is also listless and intermittent. In this case, the supporting groups made an unusually sustained and vigorous effort in close cooperation with each other. Factual data and arguments were provided by the professional and municipal organizations and by the Executive Branch of the federal government. General public interest in housing and slum clearance legislation dated to the 1930's, but much wider interest was sparked and fanned by the severe nationwide housing shortage which prevailed during the years following the war. This shortage had resulted from the depression, wartime construction limitations, and construction material shortages immediately after the war. The housing shortage was universally recognized as a national emergency because of its special impact on returning veterans. Although this temporary emergency was not relevant to most of the omnibus legislation and although it actually furnished an argument against the slum clearance provisions, it was dealt with by some of the other provisions in the Taft-Ellender-Wagner bill, and during 1947 and 1948 (before these other provisions were separately enacted in the Housing Act of 1948), it added very volatile fuel to what might otherwise have been a slow-burning fire.

Objections to the comprehensive housing legislation as a whole, and particularly bitter objections to the public housing provisions, were expressed by every national trade organization whose members were primarily engaged in producing, financing, or dealing with residential property. Although these organizations were handicapped by a "selfish special interest" label which was repeatedly pasted on them by the sponsors of the legislation and by President Truman, they nevertheless had certain counter-balancing advantages which were inherent in their being large yet specialized trade organizations. These advantages included their ability to co-

had already indicated by its vote on the Spence amendment that it would accept the 810,000 low-rent housing units proposed in the Senate bill in place of the larger number of units approved by a narrow margin on the floor of the House. See note 47 *supra*. The conferees agreed to the elimination of a provision added on the floor of the House which would have required that preference in the selection of tenants for dwellings built in a redevelopment project area be given to families displaced from the area who were willing and able to pay the rents or prices charged for the new dwellings.

[51a] See note 20 *supra*.

ordinate their efforts even more closely than their opponents could; to mobilize local chapters and members more quickly; to testify on the basis of their detailed and practical knowledge of their own industries; and to concentrate all their legislative activity in this one field. Notwithstanding these advantages and the substantial support which they received from the United States Chamber of Commerce and the National Association of Manufacturers, the several trade associations could not muster a majority of Congress on their side, particularly when the extremely wide public support which existed for the legislation was periodically intensified by bluntly worded presidential statements.[52]

Accordingly, the immediate cause for the long delay in enacting the legislation must be sought inside the Congress. The major obstacles to enactment were erected in the House of Representatives rather than in the Senate. These obstacles are readily traceable to the power to delay legislation which the House Committee on Rules and committee chairmen are able to exercise under the rules of the House. Important traditional factors in selecting Rules Committee members are seniority, which is often obtained by representing "safe" or conservative districts, and the greater ability to withstand public pressures which is afforded to Representatives from such districts. Accordingly, the Committee's power tends to be exercised on the conservative side of issues. Because "safe" districts are often rural districts, committee chairmen and Rules Committee members from such districts are especially likely to exercise their power against controversial legislation which is designed to meet problems peculiar to urban centers.

The fact that the House as a whole has many members who, unlike Senators, represent areas without any substantial urban centers, helps account for the fact that the Housing Act of 1949 passed the House by a vote of only 227 to 186, whereas it passed the Senate by a vote of fifty-seven to thirteen. A reading of the House debate on the Housing Act of 1949 confirms the existence of strong feelings by some rural congressmen against legislation to meet the special needs of city dwellers.[53] Contact

[52] See the following statements by President Truman calling for enactment of comprehensive housing legislation, including urban redevelopment provisions: *Message from the President Transmitting Outline of Plans Made for Reconversion Period*, H.R. Doc. No. 282, 79th Cong., 1st Sess. 18-20 (1945); *Message from the President of the United States Communicated to Congress*, H.R. Doc. No. 398, 79th Cong., 2d Sess. 34-35 (1946); *Address of the President Before Congress*, H.R. Doc. No. 1, 80th Cong., 1st Sess. 6-7 (1947); *Veto Message on Housing and Rent Control Act of 1947*, H.R. Doc. No. 370, 80th Cong., 1st Sess. (1947); *Midyear Economic Report of the President*, H.R. Doc. No. 409, 80th Cong., 1st Sess. 44 (1947); *Message from the President of the United States Transmitting Program for Rent Control and Housing Legislation*, H.R. Doc. No. 547, 80th Cong., 2d Sess. (1948); *Address of President of United States on Urgent Need to Check Inflation and Meet Housing Shortage*, H.R. Doc. No. 734, 80th Cong., 2d Sess. (1948); Statement on Approval of Housing Act of 1948, Aug. 10, 1948; *Address of the President Before Congress*, H.R. Doc. No. 1, 81st Cong., 1st Sess. 6 (1949); *Economic Report of the President*, H.R. Doc. No. 36, 81st Cong., 1st Sess. 6, 16 (1949); 95 CONG. REC. 144-45 (1949); *id.* at 8279-82.

[53] For example, note the following statements: Congressman Vursell of Illinois: "Mr. Speaker, the $1,500,000,000 provided for in the bill for slum clearance will go, most of it, for the purchase of land in the heart of the big cities like Chicago, New York, and several other big cities. . . . Mr. Speaker, now after . . . city administrations and city politicans through the years have brought about these slum conditions because of neglect of their duty, and by waste and extravagance of public funds, the taxpayers in

with urban problems and voters may also account for the fact that forty-two state governors had endorsed the legislation.[54]

A question may be raised as to whether the enactment of the urban redevelopment legislation was hastened or delayed by its inclusion in omnibus housing bills. To attempt to answer this question is to step into the quicksands of speculation. It is clear that the omnibus housing legislation was long delayed by the inclusion of public housing provisions; it is also a matter of record that some of the opponents of the omnibus legislation actually favored federal aid for urban redevelopment and that even the objections which were made to such aid ranged from expressions of mild doubt, through criticism only of detailed provisions, to relatively moderate opposition to the entire program. It is entirely reasonable to conclude that the omnibus legislation, including urban redevelopment provisions, would have been enacted much sooner if the public housing provisions had been abandoned; and several definite opportunities to achieve this result occurred during the history of the legislation. However, an entirely different question is presented if we attempt to judge how long it would have taken urban redevelopment provisions to be approved by Congress if they had not been combined with any other proposals. The support for urban redevelopment legislation was widely based, but it is difficult to estimate how intense this widespread support would have been if the legislation had stood alone. Perhaps only planners and municipal officials would have given it sustained and vigorous support during the 1940's. Similarly, while we know that the opposition to the urban redevelopment provisions in the omnibus legislation was relatively moderate, it is difficult to judge how intense it might have become if public housing provisions had not been attached, diverting so much hostility in their direction. With so many unknown factors, it seems to us futile to speculate concerning the time when an urban redevelopment program might have been enacted had it been offered in a separate bill.

No summary of the four-year battle over the omnibus housing legislation would be complete without some reference to the character of the fighting—and in-fighting. Opponents of the legislation accused the proponents of being socialistic or power-

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my district of southern Illinois, who have worked and saved to build their own homes, are called upon after they have paid their own taxes and kept their own homes in livable conditions, to contribute money in taxes and rentals . . . . " 95 CONG. REC. 7387 (1949). Congressman Herbert A. Meyer of Kansas: "Now what about the slum-clearance angle? Will these projects help in any way in southeastern Kansas? The answer is 'No; they will not.' The one and one-half billion dollars provided for slum clearance will be used mostly for the purchase of land in the heart of big cities such as Chicago, New York, etc. . . . If this legislation is passed the lowly taxpayers of southeastern Kansas will also have to contribute to the rebuilding of slums in New Jersey." Radio Address inserted in 95 CONG. REC. A3883 (1949). Congressman Scudder of California: "I feel that the slum-clearance program contained in this bill will not in any way benefit the first Congressional District [California] which is predominantly agricultural and with many small cities. With very few exceptions these small cities are inhabited by people who take pride in keeping up their homes regardless of how meager their means might be. Slums, in my opinion, are largely made by the people who live in them. . . . I feel the people in my district should not be compelled to pay the rentals for people residing in the large metropolitan areas." 95 CONG. REC. 8663-64 (1949).

[54] 95 CONG. REC. 8128 (1949).

hungry or demagogic. Proponents charged that the trade association members who opposed the legislation were either misled by their own hired executives or lobbyists or else were selfishly placing the chance for private profits ahead of the public welfare. It is the confident judgment of the writers—who are personally acquainted with many of the combatants on both sides—that each side was wholly sincere in its conviction that its basic position was in the public interest and that each side harbored sincere suspicions that the other side was cynically motivated. These mutual suspicions were fed by the exaggerated claims made by both sides—the proponents with respect to how very much could soon be accomplished under the legislation, and the opponents with respect to the ability of private enterprise quickly to solve long-standing and severe housing problems without federal aid. However, there was a small but not insignificant minority of the spokesmen against the omnibus legislation who were more prone than other combatants on both sides to present factual data carelessly or out of context. Unlike exaggerated general claims which merely tend to be discounted, this last weapon tended to boomerang.[55]

III

THE 1949 ACT AND AMENDMENTS[56]

A. Original Provisions

As explained in part I of this article, the major outlines of Title I of the 1949 Act were essentially the same as proposals made in 1941, except as to the type of federal subsidy involved. Basically, Title I authorized financial assistance by the Housing and Home Finance Administrator to a local public agency for a project[57] consisting of the assembly, clearance, site-preparation, and sale or lease of land at its fair value for uses specified in a redevelopment plan for the area of the project. The project could not include the construction or improvement of any buildings contemplated by the redevelopment plan.[58]

Advances of funds to the local public agency were authorized for surveys and plans in preparation of the project, and temporary loans were authorized for land acquisition and other project costs, these loans to be repayable when the land was sold or leased for redevelopment. Long-term loans, up to forty years, were authorized with respect to the portions of any sites to be leased.[58a]

Capital grants were authorized to help meet the loss involved in connection with

[55] Interesting source material on the legislative struggle may be found in *Hearings Before the House Select Committee on Lobbying Activities*, 81st Cong., 2d Sess. (1950). A brief but informative statement by Housing Administrator Foley on legislative activities of the Housing and Home Finance Agency may be found in *id.* pt. 10, *Legislative Activities of Executive Agencies*, at 39-46.

[56] The provisions of Title I of the 1949 Act and summaries thereof are, of course, available at many sources, and, accordingly, the title will not be summarized in detail here. Provisions relating to subjects discussed in part IV of this article are explained in that part.

[57] See "The 'Predominantly Residential' Requirement," *infra* at IV(A).

[58] In connection with any project on land which was open or predominantly open, the Housing Administrator was authorized to make loans, up to 10 years, for the provision of public buildings or facilities necessary to serve the new uses of such land.

[58a] See note 7 *supra*.

the project.[59] The federal grants could not exceed two-thirds of the losses on all of these projects in the locality. The local government or other public body or entity had to furnish "grants-in-aid" equal to at least one-third of such losses. These local grants-in-aid could be in the form of cash, donation of land, the use of municipal labor and equipment to clear a project area, or the installation of streets, utilities, and other site improvements, or they could be made through the provision of parks or schools or other public facilities necessary to serve or support the new uses of land in the project areas.

An outline of the method of financing an urban redevelopment project under the act can be indicated by the following table:[60]

A. *Gross project cost*		$10 million
	Land acquisition	$ 8 million*
	Demolition and relocation	1 million*
	Provision of public facilities by city	1 million
	TOTAL	$10 million
	* Financed by $9 million of federal or private loans (planning costs excluded for purposes of simplicity)	
B. *Proceeds from sale of land*		$ 4 million
C. *Net project cost*		$ 6 million
D. *Grants*		
	Federal grant of ⅔ net cost	$4 million
	Local grant of ⅓ net cost:	
	Cash grant	1 million
	Provision of public facilities by city	1 million
	TOTAL	$ 6 million
E. *Loans repaid from:*		
	Proceeds of sale of land	$ 4 million
	Federal grant	4 million
	Local cash grant	1 million
	TOTAL	$ 9 million

It was prescribed in the 1949 Act that contracts for loans or capital grants must require that: (1) the redevelopment plan be approved by the governing body of the locality; (2) the local governing body find, among other things, that the plan conforms to a general plan for the development of the locality as a whole; (3) the purchaser or lessee of the land be obligated to devote it to the uses specified in the redevelopment plan and to begin building his improvements on the land within a

[59] This loss, known as "net project cost," consisted of all project expenditures, plus the amount of non-cash local grants-in-aid, minus the proceeds of land disposition.

[60] The amounts used in this table are not intended to indicate average or typical amounts, but are assumed solely for purpose of simplicity.

reasonable time; (4) there be a feasible method for the temporary relocation of families displaced from the project area and for the permanent provision of decent, safe, and sanitary dwellings at prices and rents within the financial means of such families; and (5) none of the project land will be acquired by the local public agency until after a public hearing.[61]

The 1949 Act authorized $1 billion in federal loans and $500 million in federal grants to become available over a five-year period. The grant authorization has been increased from time to time until it is now $2 billion.[62] It has become the measure of the volume of the program authorized by the Congress. This is so because the loan authorization is a revolving fund which is replenished as loans are repaid when projects are completed. Also, in some cases federal grants are used for projects without federal loans.[63]

B. The 1954 Revision

The urban redevelopment legislation was not substantially changed until the Housing Act of 1954.[64] The revision in that act was primarily the result of recommendations by President Eisenhower's Advisory Committee on Government Housing Policies and Programs in its report made in December 1953. The dominant recommendations in this extensive report dealt with urban redevelopment. The principal motivations for these recommendations were apparently the desire of the Committee (1) to have private enterprise do a greater share of the total job of removing and preventing blight, especially through rehabilitation of existing structures; (2) to require cities to take greater responsibilities for meeting their over-all problems of slums and blight; and (3) to stimulate private residential redevelopment and the provision of private low-cost housing for families displaced by urban redevelopment and other governmental activities.

The basic change recommended was a shift from urban redevelopment to "urban renewal," which was then a term without common usage. It was described as a broader and more comprehensive approach to the problems of slums and blight, or as a redirection of the urban redevelopment program. More specifically, it meant a broadening of the program into blighted areas where the land would not be acquired by the local public agency. This was intended to permit blight in the area to be eliminated by private enterprise through rehabilitation, so that structures would be conserved before reaching a stage where demolition would be necessary.

[61] See article in this symposium, Rhyne, *The Workable Program—A Challenge for Community Improvement*, *infra* at 685, as to requirements relating to building and other local codes and regulations.

[62] § 103(b) of the Housing Act of 1949, § 106(a) of the Housing Amendments of 1955, § 301 of the Housing Act of 1957, § 405(1) of the Housing Act of 1959, 73 Stat. 672, 42 U.S.C.A. § 1453 (Supp. 1959).

[63] Such projects, involving no contract for federal loans, must be distinguished from the typical projects where (as specifically authorized by § 102(c) of the Housing Act of 1949, 63 Stat. 414, 42 U.S.C. § 1452(c) (1958)) most of a federal loan is not disbursed because substitute private funds are obtained, with consent of the Housing Administrator, on better terms with a pledge of the federal loan contract. At present, just under 90% of the outstanding loans for projects are private rather than federal.

[64] 68 Stat. 590, 622, 42 U.S.C. §§ 1451 *et seq.* (1958).

This was also intended to make the federal dollar go farther, as rehabilitation involved far less cost, especially to the federal government, than land acquisition and demolition. Most important of all, it was recognized that the vast job which needed to be done could not possibly be done solely through the very expensive method of clearance.

Major provisions of the 1954 Act relating to urban renewal are discussed in detail in other articles in this symposium. For purposes of this article, the writers believe it best merely to enumerate the following:

1. *Urban Renewal.* "Urban renewal" was substituted for "urban redevelopment," and the Title I program under the 1949 Act was broadened as recommended by the President's Advisory Committee. An urban renewal "project" was defined to include not only the previously authorized acquisition, clearance, and disposal of land by the local public agency, but the restoration of other blighted or deteriorating areas by "carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan."[65] An urban renewal project can be all redevelopment, or all rehabilitation, or a combination of the two.

Project functions which previously could be exercised by the local public agency on the land it acquired, such as installation of streets and utilities, were authorized to be exercised throughout the urban renewal area. This included the acquisition of individual parcels in a rehabilitation area for the purpose of demolishing the buildings if necessary to eliminate unhealthful conditions, lessen density, eliminate obsolete or other detrimental uses, or to otherwise remove or prevent blight or deterioration.

2. *The Workable Program.* Section 303 of the 1954 Act[66] prohibited any loan and grant contract for an urban renewal project until the locality presents to the Housing Administrator a "workable program" or plan of action for meeting its over-all problems of slums and blight and of community development generally. This program was also made a condition to federal financial assistance for low-rent public housing and for the new special FHA mortgage insurance programs authorized in the 1954 Act to assist urban renewal. The article in this symposium entitled "The Workable Program—A Challenge for Community Improvement" discusses the meaning, legislative history, and effect of this provision.

3. *Special Mortgage Insurance Programs.* Section 123 of the 1954 Act[67] added new sections 220 and 221 to the National Housing Act to make FHA mortgage insurance available on liberal terms for private residential construction which would assist in meeting the objectives of the urban renewal program. The section 220 aid is available for new or rehabilitated sales and rental housing in

[65] 68 Stat. 626, 42 U.S.C. § 1460(5) (1958).
[66] 68 Stat. 623, 42 U.S.C. § 1451 (1958).
[67] 68 Stat. 596, 12 U.S.C. § 1715k, l (1958).

urban renewal areas. The section 221 aid is available for these categories of housing provided for families displaced by urban renewal or other government action, and the housing may be located within an urban renewal area or elsewhere in the community. Because the purpose of section 220 is to encourage renewal of project areas for their most suitable housing use, which is not necessarily low-cost housing, section-220-insured mortgages may be considerably larger in amount per dwelling unit than mortgages insured under section 221, which is designed to serve displaced persons who are generally of low or moderate income. These sections have been extensively amended from time to time for the purpose of increasing their use and effectiveness.

A basic factor in making these mortgage insurance programs workable was another provision in the 1954 Act[68] establishing the Special Assistance Functions of the Federal National Mortgage Association under which it was contemplated that mortgages insured by FHA under sections 220 and 221 would be purchased by the Association when not readily acceptable to private investors. The mortgages were made, and remain, eligible for purchase under the Special Assistance Functions.

4. *Matching Planning Grants.* Section 701 of the act[69] established a new program of federal matching grants (a) to state planning agencies for planning assistance to cities of less than 25,000 population, and (b) to state, metropolitan, and regional planning agencies for planning in metropolitan or regional areas. This section has been considerably expanded by a series of amendments.

5. *Demonstration Grants.* The act[70] authorized the Housing Administrator to make grants (from urban renewal capital grant funds) to cities and other public bodies to pay for up to two-thirds of the cost of developing, testing, and reporting methods and techniques, and carrying out demonstrations and other activities, for the prevention and elimination of slums and urban blight.

6. *Exception from Residential Requirement.* The act[71] made the first exception from the requirement that an urban redevelopment area must either be predominantly residential in character or be redeveloped for predominantly residential uses. An exception up to ten per cent of the total grant authorization was made for areas which are not appropriate for residential development, but contain a substantial number of slum, blighted, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare. (Land not to be cleared and redeveloped was not made subject to the "predominantly residential" requirement by the 1954 Act.)

[68] 68 Stat. 616, 12 U.S.C. § 1720 (1958).
[69] 68 Stat. 640, 40 U.S.C. § 461 (1958).
[70] 68 Stat. 629, 42 U.S.C. § 1452a (1958).
[71] 68 Stat. 627, 42 U.S.C. § 1460 (1958).

7. *Urban Renewal Service.* The Housing Administrator was authorized to establish facilities for furnishing an "urban renewal service" to communities to assist in the preparation of "workable programs" and to provide them with technical and professional assistance for planning and developing local urban renewal operations.[72]

8. *Public Housing for Urban Renewal.* The additional low-rent public housing units authorized by the 1954 Act were made available only for meeting the needs of families displaced by governmental activities in a community where an urban redevelopment or urban renewal project was being carried out.[73]

The 1954 Act applied the same financing provision to rehabilitation as applied to clearance and redevelopment. The following table[74] illustrates the application of the capital grant formula to both:

Project Activities	Urban renewal project comprising solely redevelopment	Urban renewal project comprising solely rehabilitation (assumes a larger area)
Surveying and planning	$ 25,000	$ 25,000
Land acquisition	1,000,000	none
Demolition, clearance, and relocation	50,000	none
Installation of streets, sewers, water improvements, parks, etc.	200,000	720,000
Carrying out plans for a program of voluntary rehabilitation and repair of buildings	none	5,000
Gross project cost	$1,275,000	$750,000
Proceeds derived from sale of project land	525,000	none
Net project cost	750,000	750,000
Capital grant, ⅔ of net project cost	500,000	500,000
Local cash grant-in-aid	$ 250,000	$250,000

C. Other Amendments

One of the most significant developments in the amendments following the 1954 Act related to urban renewal planning on a wider scale than the areas of specific

[72] 68 Stat. 624, 42 U.S.C. § 1451 (1958).

[73] This limitation on low-rent public housing was repealed by § 108 of the Housing Amendments of 1955, 69 Stat. 638.

[74] Prepared by Urban Renewal Administration. See *Hearings Before the Senate Committee on Banking and Currency on Housing Amendments of 1956*, 84th Cong., 2d Sess. 151 (1956).

projects about to be undertaken. The need for this broader type of planning was recognized in section 303(d) of the Housing Act of 1956,[75] which authorized the Housing Administrator to make advances to local public agencies for the preparation of General Neighborhood Renewal Plans for urban renewal areas of such scope that the urban renewal activities in the areas may have to be carried out in stages, over a period of not more than ten years, rather than as a single project. These Plans are preliminary plans outlining proposed urban renewal activities and providing a framework for the later preparation of several specific urban renewal plans. The advances for these Plans become repayable out of funds becoming available to the local public agency for the first urban renewal project in the area.

The Housing Act of 1959[76] authorized assistance for a much broader and more significant form of urban renewal planning—the preparation of long-range "community renewal programs," or preliminary plans with respect to all of the urban renewal needs of a city. The Housing Administrator was authorized to make grants for this planning, instead of advances. These grants may be made, up to two-thirds of cost, for the preparation of community-wide plans which include identification of slum or blighted areas in the community, measurement of blight, determination of resources needed and available to renew the areas, identification of potential project areas and types of action contemplated for each, and scheduling of urban renewal activities. This enables more effective use of federal and local funds by permitting the best scheduling of urban projects in the community. Eventually it may also help to furnish information on a national basis concerning urban renewal needs. It may be noted that community-wide renewal plans can encompass work previously authorized to be done with the aid of federal advances for General Neighborhood Renewal Plans and for surveys as to the feasibility of individual projects. However, the Congress did not repeal the earlier authority for advances to assist such Plans and surveys.

Other significant amendments enacted since the 1954 Act have made federal funds available to local public agencies to compensate (if not otherwise compensated) individuals, families, and businesses for reasonable and necessary moving expenses and any direct losses of property, except good will, resulting from displacement by an urban renewal project.[77] This was done in recognition of the fact that state eminent domain laws do not generally provide adequate compensation to all the persons materially affected by the public taking of property. The federal government bears one hundred per cent of the cost of these payments instead of the usual two-thirds of project costs. The Housing Act of 1956[78] permitted payments up to $100 in the cases of an individual or family, and up to $2,000 in the case of a business concern. The maximum statutory amount of these payments is now $200 in the

[75] 70 Stat. 1097, 42 U.S.C. § 1452(d) (1958).
[76] 73 Stat. 672, 42 U.S.C.A. § 1453 (Supp. 1959).
[77] See note 1 *supra*.
[78] 70 Stat. 1100.

case of an individual or family and $3,000 in the case of a business concern.[79] There has been almost continuous pressure in Congress further to increase these amounts, particularly the amount of payments to businesses, which may have actual moving expenses several times such amount. Legislation pending in the Eighty-sixth Congress when it recently adjourned would provide further increases.[80]

Up to the present time, urban renewal amendments have each year constituted one of the principal parts of omnibus housing legislation considered by Congress. For example, the length of the urban renewal amendments in the Housing Act of 1959 is about the same as the length of the original Title I of the 1949 Act. Other extensive amendments in the 1959 Act deal with programs having a direct relation to urban renewal, such as mortgage insurance for urban renewal housing, purchase of the mortgages by the Federal National Mortgage Association, and urban planning.

In addition to increases in grant authorizations there has been a general trend in the amendments toward greater federal benefits and more local discretion[81] in the urban renewal program. For example, the 1959 Act (Title IV):

1. permits a community to count as a local grant-in-aid any eligible local public improvement started within three years prior to the execution of a loan and grant contract for the urban renewal project;

2. increases the maximum amount of relocation payments to persons and businesses displaced by urban renewal, and broadens the scope of those eligible for payments;

3. authorizes grants for community-wide urban renewal planning;

4. authorizes temporary loans, under certain conditions, for land acquisition by a local public agency before it is known that an urban renewal plan will be approved;

5. permits expenditures by a college or university in purchasing and clearing property near an urban renewal project to be counted as a local grant-in-aid, and waives the "predominantly residential" requirement in such cases;

6. defines the loans chargeable to the dollar limit on the urban renewal borrowing authorization in such a way as to make remote in time any restriction of lending activities by the limit;[82]

7. prohibits withholding available federal funds from an eligible urban renewal project except on the basis of urgency of need or feasibility of the project;

[79] 73 Stat. 674, 42 U.S.C. §§ 1456(f) (Supp. 1959).

[80] See § 801(a) of H.R. 12603, 86th Cong., 2d Sess. (1960) as reported by the House Committee on Banking and Currency, and § 403 of S. 3670, 86th Cong., 2d Sess. (1960), as passed by the Senate.

[81] One new restriction, § 407 of the 1959 Act, 73 Stat. 673, 42 U.S.C.A. § 1455 (Supp. 1959), prohibits any commitment for disposition of project land to a redeveloper unless the local public agency makes public certain information relating to the redeveloper and relating to any residential redevelopment or rehabilitation.

[82] The $1 billion ceiling on funds which can be borrowed from the Treasury for urban renewal loans is now applicable only to outstanding federal loan funds disbursed or committed and estimated to be disbursed from federal funds in the future, as of any one time under existing contracts. Under the law prior to the 1959 amendment, it applied to all loan funds contracted for without regard to whether they would ever be disbursed. The ratio of disbursed loans outstanding to private loans secured by the federal loan contracts has been as low as about 1 to 10.

8. increases the amount of authorized exceptions from the requirement that an urban renewal project area be predominantly residential in character before redevelopment or else be developed for predominantly residential uses; and

9. simplifies the statutory requirements for an urban renewal plan.

Perhaps the most significant and novel proposal embodied in urban renewal legislation considered in the recent Eighty-sixth Congress was an amendment to enable a local public agency to carry out "pilot" rehabilitation efforts in urban renewal project areas. This amendment, contained in both the House and Senate versions of the "Housing Bill of 1960"[83] (which were pending when the Eighty-sixth Congress adjourned), would permit the local public agency to acquire a few dwellings, rehabilitate them as part of the urban renewal project at project expense, and sell them to private owners. The number of these dwellings involved in an urban renewal area could not exceed fifty dwelling units, nor two per cent of the number of units which are to be rehabilitated under the urban renewal plan. The proposal contemplates that the local public agency will, through this undertaking, demonstrate to property owners in the area that rehabilitation is feasible.

The Housing and Home Finance Agency has enthusiastically supported this proposal as a means of getting rehabilitation under way in urban renewal areas.[84] Rehabilitation of substantial numbers of existing houses in urban renewal areas has been carried out successfully in only a few cases, so that this important phase of urban renewal has been lagging. The Agency indicated that the "pilot" efforts should go a long way toward stimulating property owners to rehabilitate their properties.

As this proposal would permit certain rehabilitation work on buildings to be part of an urban renewal project, it would be the first exception, as a technical matter, from the prohibition in the 1949 Act against a project including construction or improvement of any building.[85] In principle, however, the proposal would not be a departure from the purposes for which federal grants are now used. As the proposed rehabilitation would serve as a demonstration for property owners throughout the urban renewal area, it would be similar in this respect to schools and other public buildings which serve the project. The costs of these buildings are counted as local grants-in-aid and are included in gross project cost and increase federal grants accordingly.

IV

TWO RECURRING ISSUES

Although the two issues discussed in this part are not perhaps the most important issues in federal urban renewal legislation, they were selected for discussion because

[83] § 703 of H.R. 12603, 86th Cong., as reported by House Committee on Banking and Currency, and § 405 of S. 3670, as passed by the Senate.

[84] *Hearings Before the Senate Committee on Banking and Currency on Housing Legislation of 1960*, 86th Cong., 2d Sess. 990 (1960).

[85] 63 Stat. 420, 42 U.S.C. § 1460(c) (1958).

each is important, currently controversial, has a way of appearing and reappearing in varying forms and disguises, and is not likely to be finally settled soon.[86]

A. The "Predominantly Residential" Requirement

Title I of the 1949 Act included a provision designed to direct federal urban redevelopment aids toward the betterment of housing, as distinguished from the betterment of cities and urban life in general. In effect it limited an urban redevelopment project area to one "which is predominantly residential in character" before redevelopment or "which is to be developed or redeveloped for predominantly residential uses."[87] A similar limitation has been extended to all urban renewal projects and is the law today with exceptions and modifications discussed below. The enactment of these exceptions and modifications over a period of time reflects the fact that the requirement has continued to be one of the most important live issues in the field of urban renewal legislation.

The expression "predominantly residential" has had such general and frequent usage throughout the operations under Title I that some have come to regard it as a reference to an inherent characteristic of the program. Yet, it was not mentioned in the earlier urban redevelopment proposals and is not a common concept in state laws authorizing urban redevelopment or urban renewal projects.

The principal early advocates of a federal urban redevelopment program, the planners, did not approach it from the standpoint of housing. Their major objective was redevelopment in accord with a general plan for the entire urban area. Slums were treated as but one important phase of urban blight, and housing as but one important form of redevelopment.[88] This position was forcefully presented before the Taft Subcommittee by Seward H. Mott, Director of the Urban Land Institute, and Alfred Bettman, representing the American Institute of Planners.[89] The latter's statement included:[90]

> . . . a serious warning needs to be issued against conceiving urban redevelopment as a subject identical with housing or housing with little variations—housing the theme, urban redevelopment the variations. Of the uses of the land of an urban area, habitation is the largest, running, I believe, from 60 to 75 percent; but this is just as true of the unblighted as of the blighted areas, of the whole urban territory as of the blighted portion thereof. So, while housing construction will always form the larger proportion of all urban re-

[86] See note 1 *supra*.

[87] § 110(c) of the 1949 Act defined "project" to include "acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or (iii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses, or (iv) open land necessary for sound community growth which is to be developed for predominantly residential uses (in which event the project thereon, as provided in the proviso of section 103(a) hereof, shall not be eligible for any capital grant) . . . ." 63 Stat. 420.

[88] GUY GREER & ALVIN H. HANSEN, URBAN REDEVELOPMENT AND HOUSING (National Planning Ass'n, 1941).

[89] *Taft Subcommittee Hearings* 1602-22.

[90] *Id.* at 1606.

development or development, a costly mistake will be made if urban redevelopment be conceived of as the replanning and rebuilding of slum areas only or the replanning or rebuilding for housing only. The redevelopment or rehabilitation process needs to be applied to all areas which need it and for all the classes of uses which, according to good city planning principles, are appropriate to those areas. As urban redevelopment will prepare areas for reconstruction and will finance this preparation, housing, that is habitation, will be the greatest beneficiary of this process; but unless the legislation, planning and administration be understood to be for all kinds of blighted areas for all classes of urban uses, the process will not produce sound and stable results.

Objection to the above approach was voiced immediately by members of the Subcommittee, especially Senator Taft, who indicated his belief that any urban redevelopment project should involve housing.[91] He questioned the federal interest in any project going "beyond housing and beyond the elimination of slums." He argued that the federal government was committed to a policy of assisting housing, thereby relieving poverty and hardship, and that federally-aided urban redevelopment for this social welfare purpose was desirable, but projects going further merely improved the looks or financial status of local communities. Mr. Bettman contended, without being able to persuade Senator Taft, that the economic deterioration of cities affects the national economy, thereby justifying federal aid. Near the end of this discussion, the following exchange occurred:[92]

Senator TAFT. You tried to separate it [urban redevelopment] very clearly from housing. I wonder if there is not an intermediate step, an intermediate possibility? That is, that the federal government might finance the acquisition where, by doing so, they eliminate a comparatively large amount of slum housing, *where two-thirds of the place is residential.*

Mr. BETTMAN. That is right.

Senator TAFT. In order to do that, you might have to help the city finance a somewhat larger development plan. That seems to me a possible approach to it. I would regard that more favorably than a wide open plan.

Mr. BETTMAN. It would be *predominantly* housing, because all urban development is predominantly housing.

The Taft Subcommittee report recommended a predominantly residential requirement, saying "The Subcommittee is not convinced that the federal government should embark upon a general program of aid to cities looking to their rebuilding in more attractive and economical patterns."[93] As used here "predominantly residential" was taken to mean over half residential, not two-thirds.

One side-issue involved in the hearings was whether local housing authorities should administer the urban redevelopment program at the local level. The case for them was made by William J. Guste, testifying on behalf of the National Public Housing Conference. He stressed the relationship of urban redevelopment and

[91] *Id.* at 1614, 1905.
[92] *Id.* at 1618. (Emphasis added.)
[93] TAFT SUBCOMMITTEE REPORT ON POSTWAR HOUSING 17 (Aug. 1, 1945).

housing and pointed to the experience of the housing authorities as public bodies equipped to take the local public action needed in the proposed program.[94] Mr. Bettman had argued that the local planning work in connection with urban redevelopment could be done soundly only by an agency whose sole or primary function is planning, as distinguished from an operating agency, especially one which has an interest in one class of land use such as housing.[95] He also suggested that the projects be executed either through an appropriate city department or a specially created local redevelopment agency.[96] This difference in position represented a division of two groups which were major supporters of urban redevelopment legislation, with the public housing group tending to align itself with those members of Congress favoring the more narrow approach of limiting urban redevelopment projects to those involving housing.[97]

Another side-issue related to the predominantly residential requirement was the major conflict within the Executive Branch as to whether the Federal Works Agency or the Housing and Home Finance Agency should be given the authority to administer the urban redevelopment program. The Federal Works Agency, in January 1949, proposed within the Executive Branch a substitute for Title I or S. 138, Eighty-first Congress, the Administration-approved proposal for urban redevelopment legislation introduced in Congress earlier in the month. This substitute would have, among other things, eliminated the predominantly residential requirement, and would have placed the program in the Federal Works Agency. The principal argument made for the substitute was that housing constituted only one facet of a realistic urban redevelopment program. The FWA felt that the Administration-sponsored bill took a narrow approach to the problem of urban decay and redevelopment, arbitrarily excluding needed commercial and industrial projects. It was also predicted that efforts to circumvent the predominantly residential requirement would lead to administrative gerrymandering and unsound delineation of projects.[98]

In reply to the FWA's proposal, the Housing Agency contended, to the satisfaction of the Executive Branch:

1. The provisions of the Administration bill did not represent an unduly "narrow" or "restricted" approach, but would (within the framework of what Congress would then accept) meet the bulk of the problem referred to by the

[94] *Taft Subcommittee Hearings* 1690.

[95] *Id.* at 1609.

[96] *Id.* at 1614.

[97] This does not reflect the presently prevailing views of local public housing authorities, which now often administer urban renewal as well as public housing operations. In general, representatives of these and of other local public bodies now tend to join in favoring fewer restrictions on federal aids to communities so that there can be greater local autonomy.

[98] Objection was also raised to provisions of the Administration bill permitting open land projects if developed for housing use. It was contended that, as slums and blighted areas would be difficult to clear, funds made available for urban redevelopment would be channeled to the more easily handled open land projects. However, it was explained in reply that open land projects would only supplement a community's slum clearance and urban redevelopment program by helping to provide housing for displaced families.

Federal Works Agency. Most slums and blighted areas are residential, and also the best new use after clearance would frequently be for housing and its related community facilities. Many blighted business and industrial areas are surrounded by slum areas, so that these could be handled under the bill by including in the project a large enough area of surrounding slums, making the entire area predominantly residential in character. It could then be developed for commercial or industrial purposes where that is appropriate.

2. No substantial portion of the initial program should be diverted from the greatest need—the improvement of the immediate living environment of American families. Projects for other purposes would raise a question as to whether their relationship to the general welfare of the nation warrants federal expenditures in aid of the local objective.
3. The provision of housing for families living in slums cannot be separated from the elimination of the slums. They are both major interrelated problems which must be solved together. At their core are the most delicate and difficult of problems—the housing (or rehousing) of low-income families and minority groups.

In general, the legislative history explaining the predominantly residential requirement enacted as part of the Housing Act of 1949 was in accord with the position of the Housing and Home Finance Agency.[99] In explaining this requirement on the Senate floor, Senator Sparkman said, "Consistent with the findings of earlier congressional studies, the committee felt that the primary purpose of the slum-clearance program should be to help remove the impact of the slums on human lives." It may be noted that, just as groups normally aligned on housing matters split on this issue, members of the Senate frequently in opposition on housing matters were aligned in emphasizing the primary importance of the elimination of substandard housing. The statement of Senator Sparkman not only expressed the views of principal sponsors of the Housing Act of 1949, such as Senators Taft, Ellender, and Douglas, but also the views of Senator Cain, a principal exponent at the time of the most conservative position in the Senate on housing legislation.[100]

Throughout the controversy over the scope of the urban redevelopment program, its relationship to housing was recognized by all, and the differences of position arose from the degree of significance attached to that relationship. To the planners, housing was secondary—to be clearly distinguished from the basic function, the planned redevelopment of cities. To the Federal Works Agency, the urban renewal projects could have become primarily another type of public works, involving planning and engineering techniques similar to those used in other municipal improve-

[99] House Comm. on Banking and Currency, *Housing Act of 1949*, H.R. REP. No. 590, 81st Cong., 1st Sess. 16-17 (1949); 95 CONG. REC. 4604, 4613 (1949).

[100] Some proponents of the predominantly residential requirement denied any justification for federal expenditures solely to eliminate nonresidential blight, whereas others merely contended that housing betterment had a prior claim on limited federal funds.

ments, but with additional housing problems requiring consultation with housing experts. Actually, little was presented to support the separation of urban redevelopment operations in whole or in part from housing operations. Such separation would undoubtedly have been a narrow approach, rather than the broad approach it was alleged to be.

On the other hand, it seems to us that a certain narrowness pervaded most of the discussion and consideration leading to enactment of the predominantly residential requirement. Urban redevelopment projects were generally viewed as though they existed in some detached or isolated spot. In viewing the housing significance of a redevelopment project, the discussion was focused on what would happen within its physical boundaries and on methods of relocating the residents. There was recognition of the need to conform a project plan to a current master city plan, but members of Congress apparently gave little attention to urban redevelopment as a step in the long and difficult, but continuous, journey toward the redevelopment of the city as a whole. Neither was much thought given by Congress to the potential effect of urban redevelopment on the people of the entire community in their day-to-day life at home, at work, at leisure, and in transit within the city.

There were occasional references in the congressional discussions to the fact that cities are largely made up of residential areas, but this was not offered to show that urban redevelopment would in any event have a residential orientation making unnecessary any statutory requirement relating to the character of the area of each project. Senator Taft made it clear that he felt that federal aid was justified only to avoid the harmful effect of substandard dwelling structures on the people living in them. In an unsuccessful attempt to find some common ground with the Senator, Mr. Bettman, in his very able presentation before the Taft Subcommittee in support of urban redevelopment, was driven to emphasize the role which nonresidential urban redevelopment projects can play in bettering the national economy by checking economic deterioration within cities. The Housing Agency, in an attempt to hasten the enactment of legislation which was politically achievable, often pointed out that most urban blighted areas consist of housing and that most cleared land would generally be used for housing. However, this was generally done in a context of minimizing the problems which would remain if federal aid were denied to projects involving the redevelopment of nonresidential areas for nonresidential uses. The Agency contended that these cases would be few; that federal assistance for them should be deferred; and (crossing over to the shadier side of the street) that in any case, it would frequently be possible to take care of the situation by simply enlarging the area until it becomes predominantly residential. In fairness to all concerned, the narrow tone of the discussions undoubtedly reflected the lack of widely-based popular support for a broader program, it being true that important legislation is not often brought into being by technicians and congressmen and executive officials alone.

From the vantage point of today, there seems to be widespread agreement that the federal interest in urban redevelopment does not depend strictly on housing betterment as such or on the percentage of a project or program which is residential. Rather, increasing emphasis is being placed on improving the living environment of the urban population, which now includes about seventy per cent of the nation. The close interrelationship of urban renewal to over-all urban development and the close interrelationship of residential development to commercial and industrial development and to public facilities and transportation are now the common currency of popular journalism and editorial comment, and even of casual conversation among suburban commuters. By and large, the views of Congress have kept pace with those of the public and the courts—occasionally in the van and occasionally in the rear, but never very far removed.

A substantial argument could have been made for the predominantly residential requirement as simply a temporary method of channeling limited available federal funds to the area of greatest need—the slums. This was expressed by the Housing Agency and was implicit in the recommendations of the Taft Subcommittee. As the other side of the same coin, the requirement could have been supported as an economy measure in the light of other competing claims on the federal budget. As recently as 1959, the Eisenhower Administration opposed a relaxation of the requirement on the ground it would divert too much of the grant authorization from residential projects.[101] There was also the concern that the resulting broader scope of the program would create greater pressure for increases in the capital grant authorization at a time when the demands of foreign aid and defense were pressing.[102]

If it is assumed that some priority should be given to the removal of slums and to housing redevelopment, the question would still remain as to whether the predominantly residential requirement is an effective and equitable method of providing that priority. Is the best standard for this purpose the fact that at least fifty-one per cent of the area is residential either before or after redevelopment?

Obviously, many varying factors enter into a decision that a particular project has the greatest urgency or long-term value to the citizens of the urban area. There are the cost, the relative feasibility in terms of special problems of land acquisition or disposal, the extent and degree of physical deterioration or obsolescence of structures, the effect of the condition of the area on the health and welfare of its occupants or citizens of the community as a whole, and the obstacle which that area may present to improvement of other parts of the community. The degree and extent of

[101] *Hearings Before the Senate Committee on Banking and Currency on the President's Message Disapproving S. 57*, 86th Cong., 1st Sess. 106 (1959).

[102] As a substitute to such relaxation, the Administration proposed a program of temporary and 10-year refunding loans, without grants, for nonresidential redevelopment projects. In making this proposal in 1958, the Administration witnesses stated that use of capital grant funds was not warranted for coping with commercial and industrial blight. See *Hearings Before the Housing Subcommittee of the House Committee on Banking and Currency on the Housing Act of 1958*, 85th Cong., 2d Sess. 28 (1958). See also *Hearings Before the Housing Subcommittee of the Senate Committee on Banking and Currency on the Housing Act of 1958*, 85th Cong., 2d Sess. 127 (1958).

blight in the residential portion of a project is important, as well as the ground area covered by such blight; and these must be considered in relation to the degree and extent of blight in the commercial or industrial portion of the project. In case of urban renewal projects involving rehabilitation, the problem is even more complex.

All of these factors and many more should be considered by a community in selecting a specific site as the one which most warrants its financial aid and federal expenditures, and each factor should be properly weighted. In general, the proportion of the area that is residential should be one of the heavily weighted factors. However, no fixed ratio of fifty-one per cent or any other percentage could afford the best standard for all cases, as it would give no consideration to other factors. We recognize that inequities can be shown under most statutory priorities, because by their nature they are shortcuts to administrative decisions. However, in the case of the predominantly residential requirement, it seems to the writers that the degree of artificiality involved is too great to be justified in terms of administrative convenience.

Parenthetically, it may be of interest that no significant controversy over the predominantly residential requirement arose during the period immediately following the enactment of the 1949 Act. Instead, all of the fire at that time seems to have been directed toward the Agency's interpretation of the related provision in the Act authorizing a project of "open land necessary for sound community growth which is to be developed for predominantly residential uses."[103] There the issue was whether an open land project involving no element of blight may be undertaken only if it provides housing as an adjunct to slum clearance projects in the community, as the Agency contended, or could be used to provide housing for other purposes such as "new towns" or satellite communities or public housing for any low-income families in the community. In defending its position, the Agency conceded that sound community development was a purpose of the act but contended that "the dog is slum clearance, and the tail is community development." The issue, while vigorously argued on both sides, was nevertheless somewhat academic in the absence of local pressure for specific federally-aided open land projects. However, it continued to be a subject of debate until Senator Douglas, in an address before the National Housing Conference on May 6, 1952, praised the Housing Agency for following legislative history and the intent of Congress instead of the recommendations of some of the prominent members of that organization.[104]

[103] See note 87 *supra*.

[104] The Act did not specify the more restrictive use of the open-land authority; that was promised in a letter from the Housing Agency requested and used on the Senate floor by Senator Douglas during debate on S. 1070, 81st Cong., 1st Sess. (1949). See 95 CONG. REC. 4876-77 (1949). It was contended by prominent counsel that there was no ambiguity in the law, and the Agency was therefore in error in going to the legislative history on the matter. This points up the distinction between the use of legislative history by a government agency administering discretionary authority and its use by a court or an administrative tribunal engaged in a judicial or quasi-judicial proceeding affecting the legal rights of parties who are reasonably entitled to rely on the plain meaning of a statute. To a government attorney, it seems quite unrealistic in the former case, to say the least, to expect an agency to ignore the clear intent of a vast majority of the Congress to limit the Agency's discretionary authority to a narrower scope than expressed in a statute. This footnote is not intended to imply that there were not also sound

The response of Congress to pressure for assistance to nonresidential projects (including several specific projects which were called to the attention of individual members of Congress by their constituents) is reflected in the authorized exceptions to the predominantly residential requirement. A major exception was enacted in the Housing Act of 1954, which permitted ten per cent of the authorized federal capital grant funds to be used for nonresidential projects.[105] However, a project was eligible only if it contained a substantial number of slum or deteriorating dwellings or other substandard living accommodations, the elimination of which would tend to promote the public health, safety, and welfare and only if the area "is not appropriate" for redevelopment for predominantly residential uses.[106] The general exception has grown to twenty per cent. The Housing Act of 1959 not only changed the ten per cent limitation to twenty per cent, but also removed the requirement that the project area have a substantial number of substandard dwellings.[107] Thus Congress has departed from the principle that each urban redevelopment project should involve the removal of substandard housing or the construction of

policy reasons for not exercising the suggested broader authority. Not the least of these was the absence of court decisions establishing the validity of open-land projects in any state; constitutional difficulties were anticipated in undertaking open-land projects, even though necessary as an adjunct to slum clearance operations. Subsequently, the validity of predominantly open-land projects where there is some element of blight has been upheld in three states. See the grounds for decision stated in Redevelopment Agency of City and County of San Francisco v. Hayes, 122 Cal. App.2d 777, 266 P.2d 105 (1954), *cert. denied sub nom.* Van Hoff v. Redevelopment Agency, 348 U.S. 897 (1954); People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953); Oliver v. City of Clairton, 374 Pa. 333, 98 A.2d 47 (1953); and People *ex rel.* Adamowski v. Chicago Land Clearance Commission, 14 Ill.2d 74, 150 N.E.2d 792 (1958).

[105] 68 Stat. 626, 42 U.S.C. § 1460 (1958).

[106] The exception came to be known as the "skid row" amendment because it tended to affect areas which had a scattering of substandard rooming houses or "flop" houses. The Housing Agency administratively determined that the requirement that the area include a substantial number of dwellings or other living accommodations would be met if 20% of the ground area or floor area were devoted to residential uses scattered throughout the area. The Housing Act of 1954 continued the predominantly residential requirement with respect to the cleared area of a project, but did not extend it to other parts of the broader urban renewal area authorized in that act. The requirement was made applicable to the entire urban renewal area (instead of just the clearance area) by § 302 of the Housing Act of 1956 (70 Stat. 1097). This had the effect of relaxing the requirement where the rehabilitation portion of the area was residential. See also a minor exception for certain nonresidential projects, involving federal loans but not grants, in the last paragraph of § 110(c) of the Housing Act of 1949, as amended, 70 Stat. 1097, 42 U.S.C. § 1460 (1958). This minor exception was added by § 106(c) of the Housing Amendments of 1955, 69 Stat. 635, 637, 42 U.S.C. § 1460 (1958).

[107] § 413 of the Housing Act of 1959 (73 Stat. 675, 42 U.S.C.A. § 1460 (Supp. 1959)) changed the relevant language of § 110(c) of the Housing Act of 1949 to read as follows: "Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly non-residential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this title for such a project: *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of the Housing Act of 1959 shall not exceed 20 per centum of the aggregate amount of grants authorized by this title to be contracted for after such date."

This language deleted a requirement that a predominantly residential project be "clearly" predominantly residential.

housing in order to justify the federal aid. However, there has been no departure by Congress from the premise that the program as a whole should be housing-oriented and that restrictions should be included in the federal law for this purpose. In recommending the 1959 amendment, the report of the Senate Committee on Banking and Currency stated:[108]

> The committee agrees that the basic objective of the program is to eliminate slums and blighted homes but also recognizes that no community can survive without an orderly plan for renewing its commercial and industrial areas. Urban renewal in its broadest sense would renew the entire living environment of the community including its commercial areas where families must shop and its industrial areas where families must work, as well as its residential areas where families live. It is appropriate, therefore, that a reasonable percentage of Federal assistance should be used to assist a community in renewing nonresidential as well as residential areas.

When a statutory limitation is under basic attack, there is frequently, if not generally, an accommodation which avoids the complete removal of the limitation. It may be retained in modified form because of the belief that it has not yet outlived its usefulness or because of the legislature's reluctance to admit that a change in principle is involved or perhaps because of the legislature's instinctive reluctance to surrender a control. Sometimes general exceptions are provided, such as the ten per cent or twenty per cent exception to the predominantly residential requirement, and at other times exceptions are made for specific narrow purposes.[109] A number of the latter type of exceptions to the predominantly residential requirement have been enacted and others have been proposed. Taken together, they could represent a very substantial increase in the authorized volume of nonresidential projects and a substantial erosion of the basic limitation.

In 1956, the predominantly residential requirement was waived, along with other prescribed limitations, for urban areas which are in need of redevelopment or rehabilitation as the result of any catastrophe which the President finds, under other legislation, to be a major disaster.[110] In 1959, a more substantial waiver was enacted with respect to urban renewal projects which the local governing body finds will be of certain benefit to a college or university in or near the project area.[111] This 1959 exception would be extended to hospitals by bills pending in the Eighty-sixth Congress when it adjourned, one of which was passed by the Senate,[112] and the other

[108] Senate Comm. on Banking and Currency, *Housing Act of 1959*, S. REP. No. 41, 86th Cong., 1st Sess. 27 (1959).

[109] Very frequently a proliferation of such statutory modifications, including some which are designed to take care of single cases, results in extremely complex legislation. This has happened in the field of urban renewal legislation. It is interesting that groups which have sponsored complicating changes, one by one, are often among those who complain vigorously about the resulting over-all complexity.

[110] § 111 of the Housing Act of 1949, as added by § 307 of the Housing Act of 1956, 70 Stat. 1101, 42 U.S.C. § 1462 (1958).

[111] § 112 of the Housing Act of 1949, as added by § 418 of the Housing Act of 1959, 73 Stat. 677, 42 U.S.C.A. § 1463 (Supp. 1959).

[112] S. 3670, 86th Cong., 2d Sess., passed by the Senate, June 16, 1960.

of which was reported by the House Committee on Banking and Currency.[113] A number of recent bills, including some sponsored by the Eisenhower Administration and others sponsored by the Democratic congressional leadership, would also waive the predominantly residential requirement with respect to certain urban redevelopment projects in industrially depressed areas.[114] These further exceptions or waivers will undoubtedly be considered in the Eighty-seventh Congress.

If the trend to relax the predominantly residential requirement is continued, a point will soon be reached where it has no real limiting effect. Indeed, in the case of cities where the extent of industrial and commercial blight does not constitute a disproportionate share of urban blight, a question may be raised as to whether this point has already not been reached. A 1955 analysis[115] of fifty-three municipalities shows the land use of developed areas as follows:

Residential	About 73%
Commercial	About 6%
Industrial & railroads	About 21%

If about seventy-three per cent of municipal areas are residential, the twenty per cent exception, along with special purpose exceptions, should often be adequate to permit nonresidential urban renewal projects to be undertaken in about the same proportion to predominantly residential projects as nonresidential land use in the locality bears to residential land use. An additional factor which tends to make this true is that a project is charged against the exceptions only if it involves a predominantly nonresidential area to be developed for predominantly nonresidential uses. Thus, the volume of projects involving predominantly commercial or industrial areas can equal the volume permitted under the twenty per cent exception (and additional special exceptions) plus the volume of these projects which are developed for predominantly residential uses.

Although the form of future legislation on this particular subject cannot be predicted, the writers do venture to predict with some assurance that it will continue to be an active issue, with changes moving in the direction of greater freedom to undertake nonresidential projects. There is still a strong belief among many in Congress that the principal objective of the urban renewal program is the removal of slums and the improvement of housing, as distinguished from general city betterment. Others will continue to regard the predominantly residential requirement as a desirable economy measure, preventing added claims against federal grant funds. On the other side are the municipalities and local officials, ably represented in Congress

[113] H.R. 12603, 86th Cong., 2d Sess. (1960); House Comm. on Banking and Currency, *Housing Act of 1960*, H.R. REP. No. 1924, 86th Cong., 2d Sess. (1960).

[114] One such bill, S. 722, 86th Congress, 2d Sess. (1960), was vetoed by President Eisenhower on grounds unrelated to this provision. See also S. 1433, 86th Cong., 2d Sess. (1960), an Administration-sponsored bill, and S. 3569, and H.R. 12286, both 86th Cong., 2d Sess. (1960), compromise bills proposed on behalf of the Administration.

[115] See HARLAND BARTHOLOMEW, LAND USES IN AMERICAN CITIES 121 (1955). The analysis covered cities of varying sizes. Developed areas considered here do not include streets, parks and playgrounds, and public and semipublic property.

and before its committees, who want more discretion in planning and deciding the type of projects to be undertaken. An added force which seems to be tipping the balance in their favor is the position of business interests which normally tend to support restrictions on federal expenditures, but are increasingly in favor of reconstructing blighted business and industrial properties. Foremost among these are department store owners and mortgage and other lenders concerned about large outstanding investments in downtown retail properties now suffering competition from surburban shopping centers. Redevelopment to provide downtown commercial centers with parking space and attractive surroundings is a business necessity to them and a source of increased tax revenue to the city.

B. Federal-Local Sharing of Costs

The basic statutory formula[116] for sharing the costs of the urban renewal program as between the federal government and local governments has been under attack from opposite directions. Skipping over problems and statutory changes relating to technical methods of calculating the federal and the local share of program costs, it is the writers' intention to comment on attempts to change materially the relative size of the two shares.

In 1958, the Housing and Home Finance Administrator, as spokesman for the Eisenhower Administration, recommended the enactment of legislation[117] to reduce the federal share of net project costs to sixty per cent one year later, fifty-five per cent two years later, and fifty per cent three years later, with a resulting final increase in the local share to a matching fifty per cent. The change through gradual stages was intended to give localities, and possibly states, time to gear themselves to assuming the permanent larger burden. The Administrator stated:[118]

> The reasons for this recommendation are based, of course, upon considerations of the general fiscal policy of the Government and the need for greater participation on the part of States and localities in bearing the financial burden of undertakings having primarily local as well as national benefit. If essential programs such as urban renewal, which require large amounts of funds, are to be continued at their present levels, States and communities should bear a greater share of the financial burden. We do not know the total ultimate cost of eliminating all of the slums and blight in our country, but we can agree it is a staggering sum and that all of the Federal funds that could be made available would accomplish only a part of the job in the immediate future. Local expenditures should be of equal importance to the amount of work completed.
>
> Unlike many other Federal-aid programs, urban-renewal projects result in direct financial benefits to communities, in addition to the immediate objective of the program In addition to slum elimination and all of its benefits, cities receive an increased tax base

[116] See §§ 103(a), 104, 106(f), and 110(d), (e), (f) of the Housing Act of 1949, as amended, 71 Stat. 299, 300, 301, 42 U.S.C. §§ 1453(a), 1454, 1456(f), 1460(d), (e), (f) (1958).

[117] § 302 of S. 3399, 85th Cong., 2d Sess., Administration-sponsored bill introduced on March 4, 1958, by Senator Capehart of Indiana by request. A similar proposal was contained in § 304 of S. 612, 86th Cong., 1st Sess., Administration-sponsored bill introduced on January 21, 1959 by Senator Bennett of Utah for Senator Capehart.

[118] *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency*

of great and immediate financial value. In the long run, many cities may receive over a period of years sufficient increased taxes as a result of redevelopment and improvements in urban renewal areas to pay all of their local grants-in-aids—not only their cash contributions but their grants in the form of improvements and facilities. It is because of these facts, as well as other advantages of urban renewal, that so many cities are enthusiastically proceeding with their projects. Under the bill, communities would eventually pay one-sixth more of the net project cost than they pay with respect to projects now being undertaken. In view of the extent of present activities, it seems wholly unrealistic to assume that this modest increase would restrict our program.

During the course of the ensuing controversy, the Eisenhower Administration made it clear that its proposal was primarily motivated by its judgment concerning relative priorities of competing claims, including national defense and foreign aid, on a federal budget which it hoped to keep in balance. The Administration spokesmen argued that whatever upper limit might be placed on federal funds available for urban renewal, a larger total program could be supported if the local share of the cost were increased. This argument for making a given amount of federal funds stretch further was premised on the ability of localities gradually to assume the increased burden without undue hardship. The present level of activities was offered by the Administration as an indication that it was not unrealistic to expect that the cities could contribute even more. The Administration also felt that the states should participate in the program more than they had. Indeed, the proposal for reducing the federal share of urban renewal costs was part of an abortive Administration drive for returning to the states and localities greater responsibility for socially motivated programs generally.

In the meantime, local urban renewal officials, mayors, and other spokesmen for urban interests had been contending that even the present ⅔-⅓ formula placed undue hardship on the localities. From time to time, they proposed that the federal share of net project cost be increased to seventy-five or eighty per cent or even ninety per cent.[119] The President of the National Association of Housing and Redevelopment Officials made the following statement in opposition to any reduction in the federal two-thirds share and in support of increasing it to eighty per cent:[120]

on the Housing Act of 1958, 85th Cong., 2d Sess. 118-19 (1958). See also, the testimony by the Urban Renewal Commissioner, *id.* at 122-24, and in *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency on the Housing Act of 1959*, 86th Cong., 1st Sess. 119-20 (1959).

[119] These proposals for increasing the federal share should not be confused with a change which was enacted in the Housing Act of 1957. § 302 of that act, 71 Stat. 299, 42 U.S.C. § 1453 (1958), provided for the establishment of an alternative basis for calculating the federal capital grant. It permits a community to elect to receive either a two-thirds federal grant or a three-fourths federal grant with the higher percentage grant being based on gross project costs which do not include certain expenses of planning, surveys, legal services, and administrative overhead. The excluded costs are borne entirely by the local community. In effect, under the alternative formula, the federal government pays a *higher* percentage of a *reduced* project cost. In proposing the formula, the Housing Agency expressed the expectation that the federal share of the total costs would prove to be about the same under either formula, and stated that the purpose of the alternative formula is to make it possible to eliminate review and discussion at the federal level of survey, planning, and administrative costs.

[120] *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Cur-*

I need only recite some of the financial problems with which American cities are faced today—declining tax bases, limited tax resources, substantial increases in the costs of providing essential municipal services, the necessity for providing new types of municipal services, and the demands of municipal growth—to explode the myth that our cities, or our States for that matter, can, or even should, absorb a greater proportionate part of the cost of urban renewal.

The Federal-local sharing formula is the price tag which the Federal Government places on the local participation in urban renewal. By raising the price, a substantial number of communities—many of those who are most in need of an aggressive urban renewal program—will either be priced out of the program completely or unable to buy as much of it as they need.

The United States Conference of Mayors has also recommended that the federal share be increased to eighty per cent.[121] The Mayors of Boston, Milwaukee, and Gadsden, however, have suggested a ninety per cent federal contribution,[122] and the Mayor of New York, when asked what he thought about the suggestion, gave the following answer: "I mentioned that one of the recommendations at the Conference of Mayors was that the Federal contribution in redevelopment be increased from 66-⅔ to eighty per cent. If anyone would want to sponsor going to ninety per cent, I am sure the cities would appreciate that too."[123]

Although he was addressing himself to a different though related issue, the Mayor of Philadelphia in 1958 argued as follows against asking the states to take over some of the responsibility for the urban renewal program:[124]

It takes no great political knowledge to realize that this could only result in a sharp reduction in the program—because of the rural domination of State legislatures as well as the lack of State resources.

Thirty-five years ago, 75 percent of the taxes went directly to the cities and the States. Today, the Federal Government takes 75 percent and the cities and States get only 25 percent. True, the Federal Government's responsibilities have grown in those years. But so have those of the cities and States.

Particularly is this true of the cities, with their vast influxes of population. We in Philadelphia have, in the past 5 years, increased our taxes by 35 percent, largely to meet this very problem. . . .

The third of a billion dollars allocated this year for urban renewal is less than one-half of 1 percent of our national budget. It would not even be enough to pay for a single aircraft carrier.

On a later occasion, the Mayor argued that the cities have been receiving a steady influx of lower-income groups, including disadvantaged nonwhite groups, with

rency on the Housing Act of 1959, 86th Cong., 1st Sess. 572 (1959). See also, *id.* at 582, and, for earlier recommendations by the Association, see *Hearings Before the Subcommittee on Housing of the House Committee on Banking and Currency on Slum Clearance and Related Housing Problems*, 85th Cong., 2d Sess. 90, 93 (1958).

[121] *Hearings Before the Subcommittee on Housing of the House Committee on Banking and Currency on Slum Clearance and Related Housing Problems*, 85th Cong., 2d Sess. 188 (1958).

[122] *Id.* at 190, 192, 243.

[123] *Id.* at 254; see also *id.* at 255-56.

[124] *Id.* at 214.

greater social needs and lower tax-paying ability, while higher-income families have tended to move across city lines to the suburbs.[125] Others have often pointed out that states and cities must avoid increasing their taxes too sharply in relation to other states and cities in order to avoid driving industry across their borders.

Finally, an argument has been made that the federal tax structure is more productive and more equitable than state and local tax structures can possibly become in the foreseeable future, so that it is desirable to finance nationally-important programs largely with federal tax revenues. Senator Clark of Pennsylvania, in a lecture delivered at George Washington University on March 28, 1960,[126] stated that local budgets are inadequate partly because of an unwillingness to tax but more importantly because of a lack of real resources. He stated that federal revenues have risen by seventy-four per cent since 1946, but state and local revenues have more than tripled; that state and local tax rates have risen steadily, while federal taxpayers have enjoyed tax reductions; that federal indebtedness has risen five per cent since 1946, while state and local debt has risen to 309 per cent; and finally that state and local tax burdens fall far more heavily on poor and moderate-income families than do federal tax burdens. Thus, Senator Clark argued that most local tax dollars are still collected from the real property tax, although the ownership of real estate has long ceased to be a good indication of relative wealth. That is, the owner of a heavily mortgaged home may be taxed on hardly any equity at all, whereas a man who is better off, with wealth largely in a safety deposit box, escapes local taxation on these assets, but is reached by federal taxation. On the further grounds that "over half of all State tax revenue now comes from sales and excise taxes," Senator Clark concluded that both "State and local taxes fall far more heavily upon the average- and lower-income families," whereas "the brunt of Federal taxation falls upon the corporations and the upper-income families."

It is apparent from the foregoing and from a reading of all the congressional discussions over a period of several years on the issue of the federal-local share of urban renewal costs that the arguments on both sides tend to be quite general and would just as logically support raising or lowering a fifty-five or seventy-five per cent federal grant as they would support raising or lowering a 66-⅔ per cent federal grant. If objective studies have been made which would truly sharpen this issue quantitatively, they have, so far as we know, not been presented at any of the congressional hearings. Instead, both sides have presented their positions primarily in terms of what seems to them "equitable" and of the problems with which they are each faced in obtaining revenues needed for competing purposes. Under such circumstances, the congressional decision-making process necessarily tends to rest more

[125] *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency on Housing Legislation of 1960*, 86th Cong., 2d Sess. 392 (1960).

[126] *Toward National Federalism*, 106 CONG. REC. A3007, A3008 (April 5, 1960) (reprinted at the request of Representative Bowles of Connecticut).

heavily than is usual on visceral reactions. Indeed, this same tendency may be detected in the testimony by the Mayor of New York, quoted above, in which he recommended an eighty per cent federal grant, but thought that the cities would appreciate going to ninety per cent if anyone would want to sponsor the higher level. Similarly, in 1960 the Mayor of Philadelphia, testifying as President of the United States Conference of Mayors, stated that the recommendation of the Conference was for a four to one federal-local grant ratio, and then added: "I personally think that 3 to 1 would be a very fair figure. I mean, that is purely my personal position on it."[127]

It is interesting to note that the ⅔-⅓ cost sharing formula was originally recommended by the Executive Branch without any pretense that a different ratio would be unreasonable. Recognizing that large sums of money would be involved which it would be difficult for cities to raise, and allowing for greater local resistance to newer forms of municipal expenditures, it was thought desirable to exceed substantially the fifty per cent matching grant formula which is customary in almost all federal aid programs, while at the same time requiring the locality to have a truly substantial stake in a program which would benefit it both socially and financially. The present ratio seemed about right for this two-fold objective. Ten years later, it still seemed about right to Mr. William Zeckendorf, Sr., the prominent redeveloper. During a congressional hearing in January 1958, the following exchange occurred between him and Representative McDonough of California:[128]

Mr. McDONOUGH. What percentage should it be?

Mr. ZECKENDORF. Well, I think if it got to be less than a third, it would be too much of a free ride, and I think there should be enough of a challenge to local pride to make sure they know they have got to pay something in, however substantial it may appear to them to be, or insubstantial it may appear to you to be.

I think this one-third is about as close to being good as you can get, and I think if you change it, and made it, let's say, 50-50, that it might have an end result that would be antithetical to urban renewal on a national scale.

The Eisenhower Administration has reasoned that a substantial local investment in the urban renewal program assures greater interest on the part of the local electorate and closer supervision by elected local officials, and that this in turn makes for more efficient and more economical operations. It is also often pointed out that federal supervision will inevitably tend to increase to a level which the localities will find onerous if ever the local share of the cost is reduced to a point where it represents no substantial burden on the community. This line of argument is almost always presented in the context of the supervision which is necessary to avoid wasteful administration and inefficient operations. It brings to mind possible losses in administrative and overhead costs which may in a few years run to hundreds of

[127] *Hearings, supra* note 125.

[128] *Hearings Before the Subcommittee on Housing of the House Committee on Banking and Currency on Slum Clearance and Related Housing Problems*, 85th Cong., 2d Sess. 336 (1958).

thousands of dollars in a single fair-sized city and to possible losses from unwise land assembly or land sale methods which may run to a few millions of dollars. However, it may reasonably be contended that even more is at stake if ever the local financial burden ceases to be substantial. To explain this, it is necessary to identify a current which flows just below the surface of public discussion, and which may be turned against the program.

Underlying most major renewal plans are basic judgments which are not really capable of being based on objective grounds. Even assuming that primary responsibility for the local plans is assigned to mature and highly competent professional planners; and that the planners have been able to recognize all the major problems which are within the special competence of civil engineers, architects, transportation specialists, constitutional and municipal lawyers, land developers, builders, mortgage lenders, real estate dealers, land appraisers, sociologists, social workers, and civic leaders acquainted with local and neighborhood groups affected by the project; and even assuming that each of these specialists and all of the local elected and appointed officials are friendly to the program, competent, and inclined to work harmoniously in ascertaining, and reasoning from, all relevant information; and that none of the directly affected groups is hostile to the urban renewal process—there could still be a major missing ingredient for determining the basic direction of the local program. That missing ingredient is the sum of the purely subjective value judgments which must be made before a community can determine how some of our most valuable national economic resources should be allocated.

Across the nation, decisions must be made which will, over the long run, affect economic resources worth not millions, but billions of dollars. For example, city by city, questions will arise as to the price which the public should be willing to pay for low building densities and esthetically pleasing public buildings and vistas. These judgments do not turn on objectively verifiable data; they tend to defy our collective wisdom; and yet they must be made. They are too important to be made by professional planners alone, as the planners are often quick to admit. Clearly these value judgments would generally not be made in the same way by conscientious and economy-minded members of a congressional or municipal appropriations committee as they would be made by professional planners desiring, commendably, to emulate Marcus Agrippa, L'Enfant, and Haussmann. Unless there is a flexible means for resolving this type of issue, it may well, at some future time, give rise to inflexible restrictions in federal legislation.

The practical way of democratically reaching an accommodation on such differences locally is to see to it that the judgments involved will be that of the community as a whole, and that can best be done by placing a substantial financial burden on the community. More important, judgments which determine the allocation of vast national resources should not be made even by the entire local community if it is not first required to face up to hard decisions as to whether desirable

civic amenities are so desirable that the community itself is willing to sacrifice something of value for them. Thus, attaching some element of pain to the local urban renewal burden is not only justified by the local benefits which will follow, but also as the price which the locality should pay for the freedom to make basic value judgments affecting its own future. The policies of federal agencies are subject to wide swings of the pendulum as one point of view or another gains dominance in Congress, in the White House, and in the national electorate, and the best assurance that the most basic policies in local urban renewal programs will continue to be decided locally is to avoid shifting too much of the program's cost to the federal government. More specifically, there may be avoided on some future swing of the pendulum the enactment of unduly inflexible federal requirements relating to such matters as competitive bidding and priorities to site occupants, as well as onerous control over the nature of the program through prior congressional approval of appropriations and through possible congressional pressures against more novel or more expensive projects.

In the meantime, the recent direction of the congressional pendulum indicates a real possibility that the local share of urban renewal costs will actually be reduced too far. To understand why this is so we must consider, along with the pressures to reduce the statutory one-third local share to one-fourth or one-fifth or even one-tenth, other less obvious, but important, tendencies to lighten that share. These relate to the so-called "noncash grants-in-aid" which a locality may provide to assist its urban renewal projects and to certain project expenditures such as those for streets.

The noncash grants may take the form of schools, parks, playgrounds, or other public facilities, either on or off the project site, which are necessary for carrying out the project. If the public facility is of direct benefit to other areas as well as to the urban renewal project area, only a prorated portion of its cost is counted as a local grant. The eligible cost enters into the calculation of the gross project cost as well as of the local grant-in-aid so that the federal two-thirds and the local one-third shares are each calculated against a net project cost which reflects expenditures made for the public facilities.[129]

The Taft Subcommittee Report of August 1, 1945, had recommended that "expenditures on public buildings made necessary by the project" be recognized as local contributions "only to the extent that these expenditures exceed what the munici-

[129] Informal proposals made in Congress that a public facility be counted as a local grant-in-aid but not as part of gross project cost were not strongly pressed because, in addition to placing a financial burden on the community, the exclusion from gross project cost would, as a practical matter, upset the financing arrangement of the program. Members of Congress who were not persuaded by the first reason were persuaded by the second. Thus, in the example in Part III of a project having a gross cost of $10 million, if the $1 million figure for provision of public facilities were excluded from the total in "A" (Gross project cost), to which the two-thirds federal and one-third local grants are applied, and if corresponding changes were made throughout the example, the total under "E" which is available for repaying the borrowings referred to in "A" would always, as a matter of arithmetic, be inadequate so long as the city continued to receive grant-in-aid credit for the public facilities.

pality would spend for the same purpose if there were no project."[130] The literal application of this hypothetical test was rejected as not being administratively practical. That is, no federal official should be required to guess what a municipality might have done under other circumstances. For example, from the very beginning of the urban redevelopment program under the 1949 Act, if an old school, no matter how dilapidated, were replaced by a new one which drew all of its pupils from the urban redevelopment project area, the entire cost of the new school would be credited as a local noncash grant-in-aid, even though it was reasonably certain that the old school would have had to be replaced before too long whether or not the surrounding slum area was cleared. Thus, it should be recognized that from the very beginning of the program, some local expenditures which do not really represent an additional burden on the local community caused by the urban renewal program count as local urban renewal grants and also enter into gross project cost, thereby affecting the size of the federal grant. This fact is not cited with any intention of criticizing the policy, but it is relevant in evaluating the weight of the burden which the program places on the locality.

Similarly, expenditures for street improvements within an urban renewal area may be eligible as a direct project cost, even though there is a possibility that the improvements would have become necessary before too long anyway. This factor has become more significant since the 1954 amendments which extended the program to rehabilitation and conservation activities. Projects involving such activities generally cover larger areas than projects involving only clearance. Thus, there may be more streets to be improved, while at the same time there is less need for large outlays involved in land acquisition and the clearance of structures. Conservation and rehabilitation projects therefore tend to involve relatively greater use of federal funds for activities which have been traditionally carried out entirely at municipal expense.

In the early days of the program a problem arose under the requirement that a local grant-in-aid shall be "in connection with" a project "on which a contract for capital grant has been made." The requirement is reasonable but its application not always easy. Clearly, a locality ought not to be permitted to count the cost of a school if it had begun to lay the foundation before it even contemplated that there would ever be an urban redevelopment project in the vicinity. Obviously, too, the result would be unfair if a city were penalized because, before cold weather had set in, it had begun construction on a school needed for a redevelopment project without waiting until all the formalities involved in entering into a federal aid contract had been completed. Basically, the problem involved is one of finding an administratively workable test for determining the intended connection between the school or other public facility and the future urban redevelopment project. This problem was first met by having the local public agency obtain a written "prior approval" from the

[130] TAFT SUBCOMMITTEE REPORT 19 (Aug. 1, 1945).

federal government which permitted the public facility to be started, without loss of local grant credit, before the federal aid contract was signed. In view of the long period of planning which may be involved in a project, the prior approval could be given several years before the federal urban redevelopment loan and grant contract. Although this particular device (and similar later devices based on identifying a project in a contract for planning advances) appeared to the Executive Branch to provide a reasonable way to meet the demand for flexibility and the need for establishing a "good faith" connection between the public facility and the future urban redevelopment project, many localities and Congress thought otherwise.

Section 413 of S. 57, Eighty-sixth Congress, which was vetoed by the President on July 7, 1959, would have provided that a public facility otherwise eligible as a local grant-in-aid shall not be deemed to be ineligible because of the absence of a federal "prior approval" provided that the construction of the facility was started not more than five years prior to the Housing Administrator's authorization of a contract for loan or capital grant for the urban renewal project. Even the failure to notify the Administrator that a public facility had been started could not, under the section, be used as a basis for declaring the facility ineligible as a local grant-in-aid. This provision would not have removed the substantive requirement that the eligible public facility be necessary to serve an urban renewal project, but it would have eliminated a workable method for determining that the municipality had originally provided the facility in order to serve a future renewal project rather than as a routine municipal improvement. The provision was criticized by the President in his veto message[131] as having the effect of reducing the local contribution.

A similar provision, but with the five-year period reduced to three, was later enacted in section 414 of the Housing Act of 1959. The Senate Committee report[132] stated that "it is the committee's intention that local public works be credited under this provision *only if the projects are clearly a part of, and contributory to, the urban renewal project.*" The reduction of the period from five years to three years and the statement in the Committee report removed some of the danger, which was inherent in the earlier provision, that substantial urban renewal funds would be diverted into a federal program of aid for municipal public facilities. However, it still will result in credit being given for schools and other local facilities which were provided with no intention at the time to have them serve a future renewal project. While this provision represents a material chipping away of the local share of urban renewal costs, it will perhaps not cause as large a reduction in that share as another type of change which was made in the 1959 Act and which may be extended further.

In order to encourage urban renewal activities near the many colleges and uni-

[131] Message from the President of the United States, *Housing Act of 1959—Veto Message*, S. Doc. No. 34, 86th Cong., 1st Sess. (1959).

[132] Senate Comm. on Banking and Currency, *Housing Act of 1959*, S. REP. 715, 86th Cong., 1st Sess. 6 (1959). (Emphasis supplied by the Committee.)

versities which have been affected by blight in neighboring areas, section 418 of the 1959 Act added a new section 112 to the 1949 Act.[132a] A major effect of this new section is to permit a local urban renewal agency to obtain noncash grant-in-aid credit for expenditures made by a college or university for acquiring land and buildings within or in the immediate vicinity of an urban renewal project area. The buildings may be acquired by the educational institution with the intention of rehabilitating or clearing them, and the clearance expenditures made by the educational institution would add to the local public agency's grant-in-aid credit. Expenditures made by the educational institution as long as five years prior to the authorization of an urban renewal loan and grant contract would be eligible. Also, unlike acquisition of land and buildings by the local public agency itself, there will be no disposition proceeds to offset the acquisition cost which enters into the noncash credit.

Where an educational institution has, within a five-year period, engaged in an extensive expansion program, the credit which the local public agency would receive could be very substantial indeed. Yet all of the expenditures would be made by the college or university and not by the city. The credit might well be large enough to provide the entire local grant-in-aid required for the later urban renewal project near the educational institution, and there may be enough left over to provide the local grant-in-aid required for several other local urban renewal projects having nothing to do with the college or university. Thus, the local public agency could retroactively receive a large credit which substantially shifts the financial burden of urban renewal activities in that locality as between the federal and local government.

It is relevant to ask why such a departure from the federal-local cost-sharing formula should be available in order to give colleges and universities additional urban renewal benefits. As no urban renewal funds are furnished to the institution, the benefits consist of advantages flowing from the improvement of the neighboring area by a federally-aided urban renewal project and the opportunity to acquire in the vicinity additional land needed by the institution. Colleges and universities have an urgent need for expansion in the next few years, and the certainty of urban renewal in an area may be of considerable assistance to them in securing donors' funds required to carry out their building programs. The grant-in-aid credit would furnish a very strong incentive for a local public agency to undertake a nearby urban renewal project which would furnish these benefits to the institution, or to grant a higher priority than would otherwise be given to such a project over other urban renewal projects in the community.

However, it appears to the writers that urban renewal activities in the neighborhood of colleges and universities would generally be so commendable a means of accomplishing the two-fold purpose of furthering urban renewal and higher education in the locality that no special inducement should be held out to the local public agency to do what it ought to be doing anyway. Conversely, if the possibility of obtaining a large grant-in-aid credit at no direct cost to itself should induce a local

[132a] 73 Stat. 677, 42 U.S.C. § 1463 (Supp. 1959).

public agency to plan an urban renewal project in the wrong place or at the wrong time, the federal treasury will have been called upon to underwrite a distortion of a federal program. It should be borne in mind that, as the responsibility for initiating urban renewal projects is solely that of the locality, the federal government is not in a practical position to reject an eligible project which has been presented to it for approval merely because other projects might more appropriately have been given a priority by the locality.

In any case, whatever the merits or faults of the amendment may be, it must be listed among the changes which tend to reduce the local share of the cost of urban renewal activities. Furthermore, as was predicted by some opponents, this change is being urged as a precedent for further similar changes in the law. Section 406 of S. 3670, Eighty-sixth Congress (Housing Bill of 1960), as passed by the Senate on June 16, 1960, and section 704 of H.R. 12603 (Housing Bill of 1960), as reported by the House Committee on Banking and Currency on June 20, 1960, would extend these provisions to hospitals. Although no further action was taken in the Eighty-sixth Congress on legislation providing this extension, it will undoubtedly be considered in the Eighty-seventh Congress. It may be noted that universities often have extensive grounds and that many persons attached to a university live within its vicinity. Extensive grounds tend to make for a practical base from which to fight surrounding blight and the needs of students and faculty living on or near the grounds provide an additional motive for attacking surrounding blight. While similar considerations may reasonably be urged for hospitals, their force is greatly diminished by a major difference in degree. Thus, if hospitals are added to the 1959 provision, there will be little basis for rejecting the claims of a long list of other public institutions, thereby further reducing the local share of urban renewal costs.

Another feature of the act which departs from the ⅔-⅓ cost-sharing formula is the provision under which relocation payments to families and business concerns displaced by urban renewal activities are paid entirely by the federal government.[133] This departure, however, did not have its origin in pressures from municipalities to reduce their share of the cost. Instead, when legislation was introduced to authorize relocation payments under the regular cost-sharing formula, the Housing Agency pointed out that many localities would be unable to make these payments unless changes were made in state constitutions and statutes. Accordingly, the Agency suggested that if the relocation payments were to be provided for at all, they should be paid entirely out of federal funds.[134] However, the Eisenhower Administration recently recommended that removal of the upper limits on such payments (now $200 for families and $3,000 for business concerns) should be conditioned on the state or

[133] §106(f) of the Housing Act of 1949, as amended, 71 Stat. 300, 42 U.S.C. § 1456(f) (1958).

[134] Possibly because the rationale for this 100% federal contribution with respect to relocation payments was lost sight of, legislation has recently been proposed providing that the salaries of local public employees engaged in helping site occupants to relocate themselves should also be paid entirely out of federal funds, thereby treating these salary expenditures differently from all other overhead costs of the program. See § 801(c) of H.R. 12603, 86th Cong., as reported June 20, 1960.

locality assuming the responsibility for paying the one-third local share, even though this makes it necessary to amend state constitutions or statutes.[135]

Additional light on the entire question of the burden on the localities which is represented by the local one-third share of the cost is revealed by an unpublished study which the Urban Renewal Administration made early in 1959. It estimated that up to December 31, 1958, local grants-in-aid averaged about thirty-six per cent, rather than 33-⅓ per cent of net project costs, it being impossible exactly to gear the cost of grants-in-aid to future net project costs. This thirty-six per cent was estimated to be made up of cash grants averaging about fourteen per cent of net project costs, land donations averaging about two per cent, demolition averaging about 0.3 per cent, site improvements averaging a little under six per cent, and supporting public facilities averaging a little under fourteen per cent.

Undoubtedly, the tendency to cut down on the local share of urban renewal costs prompted a reference in the President's 1959 veto message on S. 57, Eighty-sixth Congress, to the fact that the local cash contributions have averaged only about fourteen per cent of net project cost. This reference brought quick replies pointing out that total local grants-in-aid were actually greater than one-third and that non-cash grants-in-aid, as well as cash grants, represent real contributions to a renewal project. Both the statement and the reply are correct, but neither is addressed to the real policy issue which is raised by the entire trend to reduce the federal share of the cost. If we should couple with the past developments future reductions in the one-third share to as little as one-fourth or one-fifth, a truly substantial shift will have been made in the relative weight of the federal and local shares. The Mayor of Milwaukee has recommended "that the financing formula be changed so that local contribution need not exceed 10 percent of the total project cost and that public works which benefit any part of a project area including such public works that benefit the city as a whole be included as offsets to local costs."[136] The adoption of such a proposal would eliminate virtually the entire local contribution to the program.

Finally, some of the pain now attached to the local share of the urban renewal costs may be psychological—and attributable to the relative newness of the program. That is, while the local burdens of the program are very real and may well become heavier as urban renewal activities are intensified, and while the critical fiscal problems faced by most of our cities are certainly onerous, it is nevertheless true that some of the resistance to local urban renewal expenditures results from the fact that cities have not yet become as accustomed to budgeting urban renewal expenditures as they are to budgeting police and fire and street and school expenditures.

[135] See statement by David M. Walker, Urban Renewal Commissioner, in *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency on Housing Legislation of 1960*, 86th Cong., 2d Sess. 123, at 125 (1960).

[136] *Hearings Before the Subcommittee on Housing of the House Committee on Banking and Currency on Slum Clearance and Related Housing Problems*, 85th Cong., 2d Sess. 192 (1958).

Yet the spokesmen for our cities are generally quick to defend the relative importance and desirability of the newer expenditures.

It is too much to expect that pressures and counterpressures with respect to sharing the costs of urban renewal will cease or that the issue will be resolved without leaving some undesirable distortions in the program. However, it is not too much to hope that the pendulum will not swing so far in either direction as to result in major harm to the program.

THE WORKABLE PROGRAM— A CHALLENGE FOR COMMUNITY IMPROVEMENT*

CHARLES S. RHYNE†

Efforts to keep pace with rapid urbanization during the twentieth century resulted in the adoption of the first comprehensive zoning ordinance in the United States in 1916[1] and of rapid improvements in local building codes during the past several decades.[2] But it has been in the last six years, since enactment of the Housing Act of 1954,[3] and introduction of the "Workable Program" concept, that the adoption, modernization, and enforcement of municipal codes and ordinances have been accelerated to levels which give promise of eventually ridding urban areas of slums and blight. Briefly stated, a Workable Program is an official plan of action undertaken by a locality for effectively dealing with slums and blight through the utilization of appropriate private and public resources. In the writer's opinion, the Workable Program concept is the most significant development of the past decade in the federal-municipal relationship.

I

HISTORY OF THE WORKABLE PROGRAM CONCEPT

The nation-wide interest in the improvement of building codes was very much stimulated in the mid-forties by an effort to reduce housing costs. The conversion from a wartime to a peacetime economy following World War II was accompanied by a sharp rise in prices; and a movement got under way to modernize building codes as a means of reducing the cost of new housing, particularly in view of the severe shortage of houses for returning veterans. Throughout the country, consideration was given to various means of encouraging the adoption of modern standards to eliminate costly requirements which did not contribute to safety or structural soundness. In this connection, the original draft of the bill that eventually became the Housing Act of 1949[4] contained a requirement that the Housing and Home Finance

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[1] See G. BURCHARD SMITH, THE LAW AND PRACTICE OF ZONING 2-3 (1937).

[2] See generally, Haar, *Zoning for Minimum Standards: the Wayne Township Case*, 66 HARV. L. REV. 1051 (1953); Nolan & Horack, *How Small A House?—Zoning for Minimum Space Requirements*, 67 HARV. L. REV. 967 (1954); *Local Government Law—A Symposium*, 8 VAND. L. REV. 8 (1955); *Municipal Housing Codes*, 69 HARV. L. REV. 69 (1956); Mandelker, *Municipal Incorporation on the Urban Fringe: Procedure for Determination and Review*, 18 LA. L. REV. 628 (1958); *Problems of Urban Growth—A Symposium*, 1959 WIS. L. REV. 3 (1959); *Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration*, 72 HARV. L. REV. 504 (1959); and CHARLES A. RATHKOPF, THE LAW OF ZONING AND PLANNING (3d ed. 1956).

[3] 68 Stat. 623 (1954), 42 U.S.C. § 1451(c) (1958).

[4] 63 Stat. 414 (1949), as amended, 70 Stat. 1103, 42 U.S.C. § 1451(a) (1958).

Administrator, in allocating slum clearance funds, "give consideration to the extent to which appropriate local bodies" modernized their codes.

In adopting the Housing Act of 1949, Congress clearly expressed its intent to alleviate the dire shortage of housing and to provide decent living quarters for every American family.[8]

Section 101 of the Housing Act of 1949 also provided a stimulus for code modernization:

> TITLE I—SLUM CLEARANCE AND COMMUNITY DEVELOPMENT AND REDEVELOPMENT
>
> *Local Responsibilities*
>
> SEC. 101. In extending financial assistance under this title, the Administrator shall—
>
> (a) give consideration to the extent to which appropriate local public bodies have undertaken positive programs (1) for encouraging housing cost reductions through the adoption, improvement, and modernization of building and other local codes and regulations so as to permit the use of appropriate new materials, techniques, and methods in land and residential planning, design, and construction, the increase of efficiency in residential construction, and the elimination of restrictive practices which unnecessarily increase housing costs, and (2) for preventing the spread or recurrence, in such community, of slums and blighted areas through the adoption, improvement, and modernization of local codes and regulations relating to land use and adequate standards of health, sanitation, and safety for dwelling accommodations. . . .

This congressional declaration of policy constitutes a prologue to the Workable Program concept adopted in 1954. The problems encountered in launching the slum clearance program under Title I of the Housing Act of 1949 proved formidable enough without requiring a high level of performance under section 101(a). In most cases, it was found expedient to give the most liberal interpretation to the requirement that a municipality modernize its codes and ordinances. However, as the Title I program progressed, more attention was given to these requirements to stimulate local planning, including the adoption of modern building and housing code standards in communities having Title I projects.

By 1953, there were indications that slums were still being created faster than they were being eliminated and that the slum clearance program as it then existed was aiding the process of urban decay by displacing slum families and forcing them to crowd into other inadequate housing facilities. A few limited programs, such as

[8] *Declaration of National Housing Policy*, 63 Stat. 413, 42 U.S.C. § 1441 (1958). "The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family . . . . The policy to be followed in attaining the national housing objective hereby established shall be: . . . (3) *appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life. . . .*" (Emphasis added.)

the "Baltimore Plan" and the "Charlotte Plan," while definitely an ameliorating factor, were not part of a total community effort, and failed to provide a solution to the problem.

In 1953, there was established the President's Advisory Committee on Government Housing Policies and Programs. Its Subcommittee on Urban Redevelopment, Rehabilitation and Conservation quoted studies prepared by fourteen cities documenting the fact that urban slums and blighted areas are costly in terms of disease, crime, juvenile delinquency, and economic waste.[6] The Subcommittee gave considerable time and study to the problem of urban slums and blight and the ways in which they could be exterminated. The conclusions and recommendations of the Subcommittee were, in part, that American cities vary greatly in their abilities to finance slum clearance programs but that the object of federal assistance must be to help the cities help themselves.[7] In response to the questions "What Can the Cities Do?" and "What Should the Federal Government Require?," the Subcommittee stated:[8]

> *What we hope we are doing is to help the cities help themselves.* By clearing slums, removing blight, and checking the deterioration cycle, cities should be able to increase municipal revenues at the same time they are reducing the demand for services. In short, we are trying to establish the urban renewal process on an orderly basis so that over the long pull we will establish healthy cities with reduced requirements for the Federal aid which we now find mandatory. . . .
>
> *There is no justification for Federal assistance except to cities which will face up to the whole process of urban decay and undertake long-range programs.* . . .

Thus, in his message transmitting to Congress the recommendations now embodied in the Housing Act of 1954, the President of the United States said in part:[9]

[6] PRESIDENT'S ADVISORY COMM. ON GOVERNMENT HOUSING POLICIES AND PROGRAMS, A REPORT TO THE PRESIDENT OF THE UNITED STATES BY THE SUBCOMMITTEE ON URBAN REDEVELOPMENT 109, 151-54 (1953).

[7] "Examination of the financial condition of American cities shows a wide disparity in their relative abilities to raise the funds required for slum elimination. Similarly, there is a great difference from city to city in the size of the slum problem and the cost of slum cure. . . .

"The objective of the Federal assistance program should be to help the cities help themselves eliminate their slums. It therefore should be geared to require cities to face up to the whole process of urban decay. It should encourage the widest possible ingenuity, initiative, and discretion at the local level, but it should require clear and certain evidence as a precondition to Federal aid that the city is realistically addressing itself to the processes by which slums are formed, and is not simply engaging in superficial, piecemeal approaches which will waste both Federal and local funds and fail to accomplish the objective.

"*The Subcommitee recommends that the extension of Federal financial assistance be conditioned upon the submission by the local community of a workable program to attack the problem of urban decay.* . . .

"This recommendation should be implemented through an amendment of Title I of the Housing Act of 1949, imposing as a condition to the obtaining of Federal assistance the submission of evidence in conformity with the recommendation.

"The Subcommittee recommends that (a) grants for renewal projects should only be made to cities which launch two-fisted occupancy code enforcement campaigns in the demolition areas." *Id.* at 113-22.

[8] *Id.* at 112. (Emphasis added.)

[9] Message from the President of the United States, *Housing Program*, H.R. Doc. No. 306, 83d Cong., 2d Sess. 2 (1954).

In order to clear our slums and blighted areas and to improve our communities, we must eliminate the causes of slums and blight. This is essentially a problem for our cities. However, Federal assistance is justified for communities which face up to the problem of neighborhood decay and undertake long-range programs directed to its prevention.

The Housing Act of 1954 amended section 101 of the Housing Act of 1949 to provide:[10]

(c) No contract shall be entered into for any loan or capital grant under this title, or for annual contributions or capital grants pursuant to the United States Housing Act of 1937, as amended, for any project or projects not constructed or covered by a contract for annual contributions prior to the effective date of the Housing Act of 1954, and no mortgage shall be insured, and no commitment to insure a mortgage shall be issued, under section 220 or 221 of the National Housing Act, as amended, unless (1) there is presented to the Administrator by the locality a workable program (which shall include an official plan of action, as it exists from time to time, for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life) for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of blighted, deteriorated, or slum areas, or to undertake such of the aforesaid activities or other feasible community activities as may be suitably employed to achieve the objectives of such a program. . . .

This amendment to section 101 of the Housing Act by Congress in 1954, establishing the Workable Program concept, marks a milestone in federal-city relations.

The 1954 Act also amended section 101(a) to read as follows:[11]

(a) In entering into any contract for advances for surveys, plans, and other preliminary work for projects under this title, the Administrator shall give consideration to the extent to which appropriate local public bodies have undertaken positive programs (through the adoption, modernization, administration, and enforcement of housing, zoning, building and other local laws, codes and regulations relating to land use and adequate standards of health, sanitation, and safety for buildings, including the use and occupancy of dwellings) for (1) preventing the spread or recurrence in the community of slums and blighted areas, and (2) encouraging housing cost reductions through the use of appropriate new materials, techniques, and methods in land and residential planning, design, and construction, the increase of efficiency in residential construction, and the elimination of restrictive practices which unnecessarily increase housing costs.

Thus the 1954 Act reversed the order of the congressional directives contained in the 1949 Act, and the Administrator was instructed, first, to give consideration to positive programs that aided in the prevention of slums and blighted areas, and second, to consider the effect of a municipality's code modernization on housing cost reductions. Also, the nature of a municipality's positive program was spelled out in greater detail in the 1954 Act; Congress expressly directed the Administrator to give consideration to the extent to which appropriate local public bodies had undertaken

[10] 68 Stat. 623, 42 U.S.C. § 1451(c) (1958).
[11] 68 Stat. 623, 42 U.S.C. § 1451(a) (1958).

positive programs through the adoption, modernization and enforcement of "housing, zoning, building and other local laws, codes and regulations relating to land use and adequate standards of health, sanitation, and safety for buildings, including the use and occupancy of dwellings."[12] In contrast, the 1949 Act had simply required that the Administrator give consideration to the extent to which appropriate local public bodies had undertaken positive programs to prevent the spread or recurrence of slums and blighted areas through the "adoption, improvement, and modernization of local codes and regulations relating to adequate standards of health, sanitation, and safety for dwelling accommodations."

II

PRACTICAL SIGNIFICANCE OF HAVING A WORKABLE PROGRAM

Under section 101(c) of the 1954 Housing Act, no federal loan or grant can be made for slum clearance, urban renewal, or public housing, nor can any mortgage be insured by FHA under sections 220 or 221 of the National Housing Act (authorizing especially liberal terms for mortgage loans on housing in urban renewal areas or on housing which serves families moving from urban renewal areas or displaced as a result of governmental action) unless a locality first presents an acceptable Workable Program to the Administrator.[13]

Delays in getting the low-rent housing program authorized in 1954 under way served to fortify the contention of local public housing agencies and others that the Workable Program requirement was serving to obstruct the low-rent housing program. The requirement with respect to low-rent housing was, therefore, eliminated in the Housing Act of 1955.[14] The fact of the matter was that delays in the low-rent program were caused by an entirely different provision in the 1954 Act, namely, a requirement that no additional public housing units be contracted for in excess of the number needed for the relocation of families displaced as a result of urban renewal and other governmental action in the community. As worded, this requirement was unduly onerous because in showing the need for additional units, account had to be taken of turnover in existing low-rent housing projects. A strong case

[12] For a further description of the Workable Program in the legislative history of the 1954 Act, see Senate Comm. on Banking and Currency, *Housing Act of 1954*, SEN. REP. No. 1472, 83d Cong., 2d Sess. 36-37 (1954); and *Hearings Before the Senate Committee on Banking and Currency on the Housing Act of 1954*, 83d Cong., 2d Sess. 220-22 (1954).

[13] Since the Supreme Court's decisions in Florida v. Mellon, 273 U.S. 12 (1927), and Steward Machine Co. v. Davis, 301 U.S. 548 (1937), there would seem to be little question as to the right of the federal government to attach conditions to the benefits it dispenses. In the latter case, Mr. Justice Cardozo, speaking for the majority, stated:

"The assailants of the statute say that its dominant end and aim is to drive the state legislatures under the whip of economic pressure into the enactment of unemployment compensation laws at the bidding of the central government. . . . But . . . there is confusion between promise and condition. Alabama is still free, without breach of an agreement, to change her system over night. No officer or agency of the national Government can force a compensation law upon her or keep it in existence. No officer or agency of that Government, either by suit or other means, can supervise or control the application of the payments. . . . Nowhere in our scheme of government—in the limitations express or implied of our federal constitution—do we find that she is prohibited from assenting to conditions that will assure a fair and just requital for benefits received." *Id.* at 587, 595, 598.

[14] 69 Stat. 638 (1955).

was made by the Administrator when he testified on the 1956 legislation for reinstatement of the requirement that a locality have a Workable Program in order to receive federal low-rent housing aid. By that time, there was general understanding that it was not the Workable Program requirement that was an obstacle to the low-rent program; and the Workable Program provision with respect to that program was reinstated in the Housing Act of 1956.[15] Opposition to the provision seemed to vanish after 1956, and many of its former opponents became active supporters. Indeed, some mayors and city attorneys have stated that the Workable Program requirement helped them get modern codes, good planning, and community betterment accepted locally, whereas prior to the federal requirement, such things were not considered politically feasible.

III

THE WORKABLE PROGRAM: WHAT IT IS

In the administration of the Workable Program concept, the Housing Agency has set forth the following seven elements as constituting a Workable Program: (1) codes and ordinances; (2) comprehensive community plan; (3) neighborhood analysis; (4) administrative organization; (5) financing; (6) housing for displaced families; and (7) citizen participation.[16]

1. Adequate *codes and ordinances* that assure structural strength, reasonable safety from fire, proper plumbing, electrical and heating installations, and which prescribe the minimum conditions under which a building may be lawfully occupied, if vigorously enforced, are vital keys to prevent the occurrence and spread of slums and blight. Unquestionably, the Workable Program requirements have stimulated the adoption and modernization of local ordinances. As a general rule, a municipality must adopt or make provision for early adoption of adequate building,[17] fire,[18] plumbing,[19] electrical,[20] and housing codes[21] before the Housing and Home Finance Administrator will certify its Workable Program. Other regulations and ordinances that are often used to aid in the elimination of blighted conditions in a municipality are those covering gas installations, air conditioning, and air pollution.[22]

2. The purpose of a *comprehensive community plan* is to anticipate the physical

[15] 70 Stat. 1103 (1956), 42 U.S.C. § 1451(c) (1958).

[16] See URBAN RENEWAL DIVISION, SEARS, ROEBUCK & CO., ABC's OF URBAN RENEWAL 12-21 (1957), for a pictorial review of the Workable Program elements.

[17] Adoption of a building code is a valid exercise of the police power. Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926); Welch v. Swasey, 214 U.S. 91 (1909); 7 EUGENE MCQUILLIN, MUNICIPAL CORPORATIONS § 24.504 (1957); 9 AM. JUR. *Buildings* § 3 (1937).

[18] 7 MCQUILLIN, *op. cit. supra* note 17, § 24.457.

[19] *Id.* § 24.538.

[20] *Id.* § 24.537.

[21] Adoption of a code imposing minimum housing standards is a valid exercise of the police power. Givner v. Maryland, 210 Md. 484, 124 A.2d 764 (1956); Givner v. Commissioner of Health, 207 Md. 184, 113 A.2d 899 (1955); Petroshansky v. Maryland, 182 Md. 164, 32 A.2d 696 (1943); Paquette v. Fall River, 155 N.E.2d 775 (Mass. 1959); Adamac v. Post, 273 N.Y. 250, 7 N.E.2d 120 (1937); Richards v. Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955); and Boden v. Milwaukee, 99 N.W.2d 156 (Wis. 1959). And see Guandolo, *Housing Codes in Urban Renewal*, 25 GEO. WASH. L. REV. 1 (1956).

[22] See Guandalo, *Housing Codes in Urban Renewal*, 25 GEO. WASH. L. REV. 1 (1956).

environment that will best serve the needs of the people living and working in urban areas and includes plans for land use, thoroughfares, community facilities, and public improvements, as well as zoning and subdivision[23] regulations.

3. *Neighborhood analysis* involves examination of the entire community and individual neighborhoods for the purpose of locating the blight and determining its extent. In addition, the analysis includes recommendations for remedial action in the particular neighborhood, such as code enforcement, public improvements, conservation, rehabilitation, clearance, and redevelopment.

4. *Administrative organization* contemplates the establishment of an adequately-staffed organization, having the necessary authority and responsibility to accomplish and effectuate a total attack upon slums and blight on a community-wide basis. There must be some method to provide a regular check on the progress of the program, and there must be coordinated action regarding all seven elements.

5. *Financing* involves reviewing needs, identifying sources of funds, and providing for the financing of needed public facilities, enforcement of codes, technical assistance for comprehensive planning, neighborhood analyses, administration of zoning and subdivision regulations, and additional personnel to accomplish over-all coordination of the Workable Program.

6. Since virtually every Workable Program will involve the displacement of some families from the houses they occupy, the community must show the Housing and Home Finance Administrator that it has accepted the responsibility of providing *relocation assistance* to all families displaced as a result of code enforcement, construction of local public improvements, urban renewal, or other governmental activity.

7. *Citizen participation* means obtaining the broad support of the community. All the planning and efforts of a few men within a city will fail unless the citizens are made fully aware of the problems of urban blight and give their support to the Program for curing this cancerous city condition.

IV

HISTORICAL DEVELOPMENT OF PROCEDURAL REQUIREMENTS FOR APPROVAL OF A WORKABLE PROGRAM

Soon after passage of the 1954 Act, the Housing and Home Finance Agency issued Circular R-1, "How Localities Can Develop A Workable Program for Urban Renewal," to provide general guidance on what constituted a Workable Program and to assist in the preparation of submissions by communities. In the early days, submissions were not scrutinized too harshly. Annual recertifications were required, but not quite as much progress was demanded for recertification as is expected today.

After the Workable Program requirement was reinserted in the 1956 Housing Act

[23] A zoning ordinance is a valid exercise of the police power. Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926); 7 MCQUILLIN, *op. cit. supra* note 17, § 25.52.

Subdivision regulations are a valid exercise of the police power. Ayres v. City Council of Los Angeles, 34 Cal.2d 31, 207 P.2d 1 (1949); Annot., 11 A.L.R.2d 524, 532 (1950).

as a prerequisite for low-rent housing assistance, the Housing Agency issued Circular R-2, "Workable Programs for Small Communities and Rural Non-Farm Areas," which was helpful to smaller communities, ready to proceed with low-rent public housing projects and wishing to obtain a Workable Program certification with minimum implementation.

The original Workable Program procedures called for a review of the locality's submission in the HHFA Regional Office. If the submission was acceptable, a summary was prepared and a recommendation for approval was submitted to the Administrator. This was followed by a Central Office review to assure general compliance with agency policy and to follow progress. Upon development of a uniform pattern, in 1958, a greater share of the responsibility for securing compliance with legal and administrative requirements was shifted to the field. This was followed in 1960 by a streamlining of the existing procedure. However, under the specific provisions of section 101(c) of the Housing Act of 1949, the final authority to determine whether a Workable Program meets the requirements of the statute must be exercised by the Administrator, and may not be delegated. The express prohibition against delegation was undoubtedly inserted in the law in recognition of the fact that so many different forms of federal aid, affecting so many different interests, were dependent on this one certification.

With the passage of time, the localities became better geared to the Workable Program concept, and the Housing Agency began applying more realistic requirements, depending upon the conditions existing in the particular locality. Apparently the Agency was still desirous of avoiding the imposition of requirements that would be too rigid, but at the same time believed that cities were becoming increasingly more able to meet stricter requirements and to make faster progress.

Section 101(d) of the 1954 Housing Act provided for the establishment of an Urban Renewal Service, as recommended by the President's Advisory Committee. One of the duties of this Service is to give advice and assistance to communities in the development of their Workable Programs. Originally, this work was performed by the existing staff of the Housing Agency, both in the Central and Regional Offices. However, the increasing importance of the function resulted in the creation in 1959 of a top-level position, that of Special Assistant to the Administrator (Workable Programs). Correspondingly, the Housing Agency has established in each of its Regional Offices the position of Special Assistant to the Regional Administrator (Workable Programs).[24] In addition, Housing Administrator Norman P. Mason, on June 16, 1960, announced the appointment of two experts on government and planning in small towns to assist in making the Workable Program a more effective tool for use by towns of 2000 population or less, with a view to revising Circular R-2.

[24] 68 Stat. 623 (1954), 42 U.S.C. § 1451(d) (1958); HHFA, Regional Circular No. 494, May 11, 1960.

V

PRESENT PROCEDURAL REQUIREMENTS FOR APPROVAL OF A WORKABLE PROGRAM

Below are outlined the procedural steps that a municipality must follow to have its Workable Program approved by the Housing and Home Finance Administrator:

1. The Workable Program is prepared by the locality.[25] A municipality may call upon the appropriate HHFA regional office for technical assistance in preparing its Workable Program.

2. The Workable Program is approved by the city council or mayor, or both, as required. The governing body also adopts a declaration of policy, summarizing what the community hopes to accomplish through its Workable Program, identifying specific problems to be solved and major objectives to be attained. Such a declaration of policy constitutes a definite statement of the position local officials intend to take and the broad policies they intend to follow. The adoption of the Workable Program concept by any municipality should, in any event, be made the occasion of considerable local significance and adequate publicity should be given to its adoption to aid in the understanding of the program by residents of the municipality.

3. The plan is submitted to a Regional Office of the Housing and Home Finance Agency, together with supporting documents (such as applicable municipal codes and planning items).

4. The Regional Office reviews the municipality's submission and may call upon the locality for additional information. When the municipality's Workable Program is considered adequate, the Regional Administrator recommends that the HHFA Administrator approve the Program. Upon approval, the municipality is notified.

To keep its Workable Program in effect, the locality has it recertified by the Housing Administrator annually, upon a showing of reasonable progress.

VI

ACCEPTANCE OF THE WORKABLE PROGRAM

Since adoption of the Workable Program concept in the Housing Act of 1954 and through May 1, 1960, the Housing Administrator had approved Workable Programs for 1,124 localities throughout the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. Based on 1950 census figures, over 58,000,000 people live in these 1,124 localities which have or have had Workable Programs. Only 246, or 21.8 per cent, of these localities either did not request recertification after one or more years of activity, or their progress was not considered adequate to justify recertification. There are indications that in many cases the localities continue to carry out basic community improvement objectives—if at a later date additional federal aid is sought, the locality can demonstrate its interim progress and request recertification.

[25] HHFA, HOW LOCALITIES CAN DEVELOP A WORKABLE PROGRAM FOR COMMUNITY IMPROVEMENT (rev. 1960), for a complete discussion of the requirements for a Workable Program.

Even so, over seventy-nine per cent of the communities have kept their Workable Programs current.[26]

VII

REACTION TO THE WORKABLE PROGRAM CONCEPT

In connection with the preparation of this article, inquiries were sent to various city attorneys to sample local reaction to the acceptance of the Workable Program concept throughout the country. The responses came from seventy-two cities having Workable Programs in thirty-two states and the District of Columbia.[27]

The opinions regarding the Workable Program concept, as expressed by the city attorneys, range from those considering it exceptionally worthwhile and valuable to those concluding that it adds little to the existing situation. For instance, the city attorney of Norfolk, Virginia, attributes the fact that his city received an award as an All-American City to the adoption of a Workable Program. In contrast, the corporation counsel of one large city stated that the approval of a Workable Program added little, because his city had already adopted and was enforcing adequate codes and ordinances, so that complying with the Workable Program requirement was merely a formality required to receive federal aid. Without questioning the validity of his conclusion for his city, it is, of course, true that the success of any legal requirement should be judged by the impact on those toward whom it is directed and not by the absence of real impact on those who have no need for it.

The city attorneys who favor the Workable Program concept regard it, irrespective of the fact that it may be a condition precedent to receipt of federal aid, as a long-range, desirable plan that is helpful in pointing out deficiencies in municipal codes and ordinances and that provides a stimulant for the improvement of local conditions.

The city attorneys who have some misgivings about the Workable Program concept fear that local initiative may be destroyed by the imposition of inflexible require-

[26] See Appendixes A and A[1], indicating the total number of localities, and the number of localities by population, for which the Administrator has approved Workable Programs.

[27] The questionnaires requested the following information:

1. Date of HHFA approval of Workable Program.
2. Date of latest HHFA approval of recertification of Workable Program.
3. Whether the Workable Program was adopted pursuant to express or implied authority.
4. Whether the Workable Program was approved on behalf of the city by the mayor, city council, or both.
5. The dates of adoption and latest amendment of zoning, housing standards, subdivision control, building, plumbing, and electrical ordinances.
6. Codes and ordinances that are currently proposed for adoption.
7. The opinion of the city attorney as to whether the administrative machinery is adequate and practical for effective enforcement.
8. An indication by the city attorney as to judicial processes that have an important effect on code enforcement.
9. Date of adoption and authority for adopting a master plan.
10. The legal effect of adopting a master plan.
11. An evaluation of the Workable Program concept, including the merit of the concept and what should be done to strengthen it and make it more effective and useful.

ments not tailored to the needs of the individual city. One city attorney notes that it has been suggested that his city adopt subdivision regulations, even though it appears that there may be no more land available for subdivision or development in the city; however, this would appear to be a criticism of the particular suggestion, rather than of the Workable Program concept, which certainly does not require that futile actions be taken. Several city attorneys point out that the preparation of a Workable Program is an expensive proposition and that the added workload in drafting ordinances and prosecuting cases as a result of increased enforcement of higher code standards adds another duty to the already busy day of the city attorney and his staff. Several city attorneys also raise a question as to whether the immediate enforcement of new codes adopted under a Workable Program might not place an impossible burden on people who would have difficulty raising funds to bring their dwellings up to the new standard.

Apparent weak spots in the program, at a local level, as nearly as can be concluded from the survey, are a failure on the part of all components of the city government to work as a team and a shortage of personnel at all levels of enforcement. As to the role of the courts, most city attorneys do not complain of an excessive backlog of cases; but many indicate a weakness in enforcing various codes resulting from frequent continuances and a reluctance to assess harsh penalties.

Several attorneys suggest that legislation might be sought to permit surcharging land for demolition and compulsory repairs. Other attorneys recommend that the federal government provide some form of financial aid to assist the localities in preparing and adopting Workable Programs. Section 701 of the Housing Act of 1954[28] is a long step in this direction and provides for grants for urban planning assistance for municipalities, counties, and metropolitan and regional areas, the funds going to state, metropolitan, and regional planning agencies.[29]

The concensus among the responding city attorneys is that the Workable Program concept has contributed substantially to the adoption, modernization, and enforcement of municipal codes and ordinances.[30] Although it can be assumed that many of the municipalities would have adopted or amended a housing code between the years 1954 and 1960, even if Congress had not adopted the Housing Act of 1954, it is significant to note that ninety per cent of the cities having Workable Programs have adopted or amended their housing codes since 1954, or are currently considering adopting a code imposing minimum housing standards. The conclusion can also be inferred that the Workable Program concept has been a substantial influence in the adoption and modernization of master plans, building codes, electrical codes, plumbing codes, subdivision regulations, zoning ordinances, and other municipal regulations and ordinances.

[28] 68 Stat. 640, 73 Stat. 654, 40 U.S.C.A. § 461 (Supp. 1959).

[29] See Appendix B, containing a summary of the responses to questions relating to the adoption and amendment of master plans and various municipal codes.

[30] The forthcoming *Municipal Yearbook* states that the Housing Act of 1954 was "a major influence to the increase in the number of cities with housing codes." Washington Post, June 11, 1960, p. B-8.

The effect of the adoption of the Workable Program on the modernization and adoption of necessary codes and ordinances is clear.[31] The number of cities having adequate housing codes jumped from twenty-one to fifty-three per cent after the adoption of a Workable Program. This remarkable result in so short a period of time is certainly convincing evidence of the degree of influence that the Workable Program can have on the adoption of minimum housing standards.

A notable feature of the Workable Program concept is the fact that it does not involve, as such, the direct appropriation and outlay of federal funds. Congress has not appropriated money to be expended for aiding the municipality in preparing its Workable Program. The Housing and Home Finance Agency offers technical assistance in the field to municipal officials by having its staff assist in the preparation of Workable Programs, but there is no federal payment to cover the expenses of the locality in that connection. As indicated above, the enactment of section 701 of the Housing Act of 1954 was a step in that direction; that section provides for a program of grants "to assist State and local governments in solving planning problems resulting from increasing concentration of population in metropolitan and other urban areas, including smaller communities, to facilitate comprehensive planning for urban development by State and local governments on a continuing basis, and to encourage State and local governments to establish and develop planning staffs."[32]

Probably the most significant result of the adoption of the Workable Program concept is the development of a local awareness of housing problems and an enthusiasm for improving housing conditions and standards.

VIII

CONTEMPORARY PROBLEMS REGARDING THE WORKABLE PROGRAM

An amazingly large percentage of the city attorneys responding to the inquiries sent to them indicate that in their opinion a sufficient number of inspectors and other officers have not been hired to enforce local codes. In many instances it was reported that code enforcement was divided among several branches of the city government, with the result that several inspections under several codes at several different times were the order of the day. Certainly a universal realization of the benefits of coordinating the enforcement of all codes is vital.

It appears that some local officials treat the Workable Program as a mere formality or prerequisite to receiving federal aid, with the result that once a Program is adopted and the aid received, it is forgotten; and that others proceed on the assumption that the Workable Program is an obstacle to be overcome, rather than the opportunity for community improvement that it is. The cure for this lack of perspicacity and understanding of what the Workable Program is and what it can accomplish is a complete re-evaluation of the merits of the program. As Dr. Ernest M. Fisher said, local and federal officials both should think in broader terms, set out longer-range

[31] See Appendix C, summarizing the effects experienced in 142 municipalities throughout the country.

[32] § 701 of the Housing Act of 1954, as amended by § 419 of the Housing Act of 1959, 68 Stat. 640, 73 Stat. 654, 678, 40 U.S.C.A. § 461 (Supp. 1959).

objectives, and evolve a single, integrated Workable Program rather than think on a project-by-project basis that results in obtaining a share of federal funds but bypassing the potential benefits of the Workable Program.[33]

It appears that local officials readily comprehend and appreciate the significance of the first requirement of a Workable Program, namely, the adoption or modernization of adequate building, electrical, plumbing, and housing codes, but that the other six elements are more intangible and less understood. It is submitted that there is a need for further emphasis of adequate administrative organization, detailed neighborhood analyses, broad citizen participation, the provision of vitally-needed housing for displaced families, and comprehensive community planning. The HHFA is interested in making clear the extent and importance of these elements, and it appears that the more definitive discussions contained in HHFA's revised, *How Localities Can Develop a Workable Program For Community Improvement,* issued in May 1960, together with organizational changes in HHFA, are a good start in this direction.

Greater attention should be devoted to the *enforcement* of codes adopted as part of a Workable Program. Many of the city attorneys who responded to the survey indicated that the city councils have not provided the additional staff needed to perform the added work involved in modernizing and drafting new codes and litigating the numerous cases that result from efficient enforcement of the codes. Many of the attorneys who responded, and many people who had already surveyed the operations of the Workable Program, have noted that the preparation of a Workable Program generally results in additional expense. It has been suggested that the federal government should provide some form of financial assistance to aid the municipality in the preparation of a Workable Program.

Of course, there can never be a federal cure for lack of local initiative. Workable Program progress is up to the leaders of our cities, including the city attorneys, who must inform the public about the benefits of a Workable Program and otherwise provide leadership.

Some city attorneys feel that the requirements suggested by HHFA for a locality's Workable Program might prove to be inflexible, stereotyped, not tailored to individual city needs, it has been noted, and might result in destroying local initiative and independence. The HHFA should avoid permitting such a result to develop. Certainly, it was the intent of Congress (as evidenced by the legislative history quoted above) to adopt a concept that by its inherent nature was flexible enough to be adapted to each individual locality's needs and problems.

HHFA should also avoid requiring too much paperwork and red tape in connection with the development of the Workable Program requirements. Instead, the HHFA field staff should work closely and informally with the communities having Workable Programs, not only to provide technical assistance, but also to keep abreast of local developments. Consideration might be given to the possibility

[33] HHFA, A STUDY OF HOUSING PROGRAMS AND POLICIES (1960).

of establishing longer recertification periods; on the other hand, it should be recognized that there are benefits to be derived from fairly frequent periodic revaluation. One of the city attorneys responding to the survey indicated that one of the outstanding benefits his community has derived from adopting a Workable Program is the fact that annually it has a deadline for making an inventory and determining how much progress it has made during the year. The changes in HHFA organization and procedures, discussed above, show that the Workable Program concept is being given added importance at the Washington level. The writer looks for a corresponding increase in emphasis on the local level.

IX

CONTEMPORARY LEGAL PROBLEMS CONSIDERED

While the central cities in urban areas adopt Workable Programs and clean house, many slum and potentially blighted areas are being created in other sections. Until 1959, HHFA was limited in the efforts it could extend to encourage renewal and development planning on a regional or metropolitan area basis. The Workable Program concept relies primarily on powers exercised by municipalities within their boundaries. However, the Housing Act of 1959 amended section 101(b) of the Housing Act of 1949,[84] to provide as follows:

> In the administration of this title, the Administrator shall encourage the operation of such local public agencies as are established on a State, or regional (within a State), or unified metropolitan basis or as are established on such other basis as permits such agencies to contribute effectively toward the solution of community development or redevelopment problems by the State, or regional (within a State), or unified metropolitan basis. The Administrator shall particularly encourage the utilization of local public agencies established by the State to operate on a statewide basis on behalf of smaller communities within the State which are willing to undertake or propose to undertake urban renewal programs whenever that arrangement facilitates the undertaking of an urban renewal program by any such community, or provides an effective solution to community development or redevelopment problems in such communities, and is approved by resolution or ordinance of the governing body of the affected communities.

This section is a small beginning to the solution of a large problem. The power and authority of a municipality to enter into cooperative arrangements and compacts that involve other jurisdictions outside the city proper usually require specific statutory authorization.

Many states have authorized mutual aid compacts between municipalities for specific or general purposes, and other states have authorized the imposition of a municipality's building, zoning, and subdivision regulations on areas outside the city.[85] Certainly this trend must continue in view of the fact that many urban communities are rapidly beginning to realize that jurisdictional islands are ex-

[84] 73 Stat. 659, 42 U.S.C.A. § 1451(b) (Supp. 1959).

[85] Omaha v. Glissman, 151 Neb. 895, 39 N.W.2d 838 (1949); Petterson v. Naperville, 9 Ill.2d 233, 137 N.E.2d 371 (1956).

pensive luxuries in our environment. Slums and blight have no respect for jurisdictional lines.

The enactment by states of laws providing building, housing, and other code standards on a state-wide basis is a noteworthy achievement that should be encouraged throughout all of our states. This approach enables all localities in the state, big and small, urban and rural, to achieve some minimum housing standards. Of course, in terms of Workable Program requirements, a state-wide code may well be deficient and inadequate as applied to a particular urban area. For instance, the state legislature of California adopted a law imposing a state-wide minimum housing standards code,[36] but the HHFA insisted that some urban centers would have to adopt ordinances imposing stricter standards before a Workable Program would be approved. Legally, the adoption of local ordinances on a subject already covered by state legislation poses some questions as to limitations upon the authority of a municipality to adopt such a code. However, it has been held generally that the presence of a state statute does not preclude a municipal corporation from passing a building or housing code ordinance that goes into more detail and imposes higher standards than the state law.[37]

Many of the city attorneys also indicate the need for a state statute giving the city a lien or some form of preference for costs involved in demolishing substandard dwellings. That demolition of substandard dwellings is generally upheld as a reasonable exercise of the police power can no longer be seriously debated.[38] It has also been held that a statute granting a lien against property for the cost of demolishing substandard buildings is valid.[39]

Another important area for consideration is the field of model codes. Undoubtedly, the Workable Program concept has had a substantial impact on the development of model building, zoning, housing standards, electrical, plumbing, and other codes and ordinances for adoption by municipalities. The National Institute of Municipal Officers offers a Model Ordinance Service. The American Institute of Architects, the National Association of Homebuilders, and the National Society of Professional Engineers have done a great deal of work in this area. There are a large number of excellent model codes.[40] The National Association of Homebuilders furnishes

[36] State Housing Act, CAL. HEALTH & SAFETY CODE §§ 15000-17902.

[37] Coyle v. Alland & Co., 158 Cal. App.2d 664, 323 P.2d 102 (1958); see Barry v. Contractors' State License Board, 85 Cal. App.2d 600, 193 P.2d 979 (1948); 7 MCQUILLIN, *op. cit. supra* note 17, § 24.510.

[38] See NIMLO REPORT NO. 111, DEMOLITION, VACATION OR REPAIR OF SUBSTANDARD BUILDINGS (1945).

[39] Oosterwyk v. Milwaukee, 7 Wis.2d 160, 96 N.W.2d 372 (1959).

[40] The BOCA Building Code, Building Officials Conference of America, Inc., 1525 E. 53d St., Chicago 15, Ill.; the National Building Code, National Board of Fire Underwriters, 85 John St., New York 38, N. Y.; the Southern Standard Building Code, Southern Building Code Congress, Brown-Marks Building, Birmingham 3, Ala.; the Uniform Building Code, International Conference of Building Officials, 610 S. Broadway, Los Angeles 14, Cal.; the National Electrical Code, National Fire Protection Association, 60 Batterymarch St., Boston 10, Mass.; the National Plumbing Code, American Standards Association, 70 E. 45th St., New York 17, N. Y.; and the Uniform Plumbing Code, Western Plumbing Officials Association, 730 Southwestern Ave., Los Angeles 5, Cal.

a very useful Building Code Kit.[41] But, in spite of these efforts, there remains a great deal to be done in this area, particularly with regard to making the citizenry aware of the benefits incident to adoption of modern codes.

The legal profession must also in the near future examine the court procedures involved in the enforcement of housing and other municipal codes relating to the elimination of slums and blight. Crowded dockets and the tendency to sympathize with distressed defendants, resulting in light penalties and delays in compliance through numerous continuances, are factors that call for serious consideration. It is only through the efforts of citizens, local officials, the courts, and the entire legal profession that this problem can be cured, possibly through the establishment of a Housing Court. One recent break-through in this area has taken place in the District of Columbia. With the cooperation of the Chief Judge in the Municipal Court for the District of Columbia, the District of Columbia Department of Licenses and Inspections, and the Office of the Corporation Counsel, a new procedure has been instituted to make code enforcement more effective. Essentially, under this procedure, certain afternoons of each week are set aside by the Landlord and Tenants Branch of the Municipal Court for the District of Columbia for the hearing of cases involving violation of various codes. This procedure removes code enforcement cases from the ordinary criminal enforcement dockets and the multitude of prosecutions for other misdemeanors that usually add to the delay in code enforcement procedures. According to Chester H. Gray, Corporation Counsel for the District of Columbia, this procedure has been very successful and has brought about a closer working relationship between the court and enforcement personnel, resulting in expeditious handling of cases that require court prosecution.

CONCLUSION

The Workable Program concept enacted as part of the Housing Act of 1954 has been a very important catalytic agent in the recent adoption and modernization of codes relating to health, safety and sanitation aspects of life in the city. There remains much to be done. Model codes should be further developed, particularly as to state-wide application. Inspections and court proceedings must be accelerated to make enforcement more effective. Of course, while streamlining may be a help, there will be additional expenses involved in bringing about these results. However, in the writer's opinion, the welfare of our country in these times of rapid urban growth requires that such steps be taken.

The Workable Program is a challenge to community improvement. It has already produced excellent results. And improvements in the implementation of the Program on the federal, state, and local levels will be effective in bringing about an even greater improvement in living conditions in urban areas throughout the nation.

[41] National Association of Home Builders, Construction Division, National Housing Center, 1625 L. St., N.W., Washington, D.C.

APPENDIX A

WORKABLE PROGRAMS, MAY 1, 1960, BY STATE

	All Localities with Active or Expired Certifications	Certification in Effect or Recertification Requested	Certification Expired—No Request for Recertification
Total	1,124	878	246
Alabama	88	66	22
Alaska	6	3	3
Arizona	4	4	..
Arkansas	19	16	3
California	52	44	8
Colorado	2	2	..
Connecticut	21	16	5
Delaware	3	3	..
District of Columbia	1	1	..
Florida	50	41	9
Georgia	126	78	48
Hawaii	2	2	..
Illinois	33	26	7
Indiana	12	12	..
Iowa	3	3	..
Kansas	6	5	1
Kentucky	35	32	3
Louisiana	53	26	27
Maine	2	2	..
Maryland	4	4	..
Massachusetts	24	20	4
Michigan	26	23	3
Minnesota	6	6	..
Mississippi	56	26	30
Missouri	16	15	1
Montana	2	2	..
Nebraska	1	1	..
Nevada	2	2	..
New Hampshire	4	4	..
New Jersey	48	48	..
New Mexico	1	1	..
New York	43	38	5
North Carolina	20	19	1
North Dakota	2	2	..
Ohio	15	13	2
Oklahoma	5	5	..
Oregon	7	6	1
Pennsylvania	63	63	..
Puerto Rico	48	47	1
Rhode Island	3	3	..
South Carolina	8	5	3
Tennessee	64	56	8
Texas	99	50	49
Utah	1		1
Vermont	1	1	..
Virginia	13	13	..
Virgin Islands	1	1	..
Washington	5	4	1
West Virginia	13	13	..
Wisconsin	5	5	..

APPENDIX A[1]

WORKABLE PROGRAMS, MAY 1, 1960, BY POPULATION

Population of Places Based on 1950 Census	Total Number of Places	Places That Now Have or Have Had Workable Programs		Places Where Approval Is Current or Recertification Requested	
		Number	% Of Class	Number	% Of Class
Over 500,000	18	18	100%	18	100%
100,000 to 500,000	91	78	86%	75	82%
50,000 to 100,000	128	86	67%	82	64%
10,000 to 50,000	1,042	289	28%	250	24%
5,000 to 10,000	1,198	159	13%	132	11%
2,500 to 5,000	1,884	136	7%	98	5%
Under 2,500	14,376	327	2%	195	1%

APPENDIX B

SUMMARY OF CITY ATTORNEY SURVEY ON ADOPTION OF CODES

Type of Plan, Code or Ordinance	Total Responses	Adopted or Last Amended Before 1948	New Amendment Proposed	Adopted or Last Amended 1949-1954	New Amendment Proposed	Adopted or Last Amended 1954-1960	New Amendment Proposed	Proposed or Under Consideration for First Time	Percentage of Cities Having Plan, Code, or Ordinance Amended or Adopted, Proposed for the First Time, or An Amendment Proposed Since 1954
Master Plan	52	14	2	10	—	17	—	11	58%
Building Code	60	9	4	10	—	40	5	1	75%
Electrical Code	54	7	3	12	4	33	6	3	80%
Housing Standards Code	58	2	1	7	2	40	5	9	90%
Plumbing Code	55	7	3	13	4	35	5	0	76%
Subdivision Regulation	46	6	2	11	0	27	4	2	67%
Zoning Ordinance	62	6	2	6	1	50	12	0	85%

APPENDIX C

SURVEY OF CODES OF 142 LOCALITIES, DECEMBER 1958

	Status of Code in Localities When Workable Program Was First Submitted to HHFA			Status of Code in Localities When Workable Program Was Recertified		
	None	Inadequate	Adequate	None	Inadequate	Adequate
Building Code	19	39	84(59%)	5	15	122(85%)
Housing Code	78	34	30(21%)	38	28	76(53%)
Subdivision Regulation	35	25	82(57%)	20	13	109(76%)
Zoning Ordinance	25	47	70(49%)	13	32	97(68%)

APPENDIX D

Ordinances in Workable Programs: When Enacted & Amended

	Approval Date of Initial Wrk. Pgm. by HHFA	Latest HHFA Recertification	Authority to Adopt Workable Program: Express or Implied	Mayor or Council Approves Wrk. Pgm. for City	Ordinances in Workable Programs: When Enacted & Amended										Master Plan	
					Building		Electrical		Housing Standards		Plumbing		Subdivision Control		Zoning			
					Enacted	Amended	Enacted	Amended	Enacted	Amended	Enacted	Amended	Enacted	Amended	Enacted	Amended	Adopted	Authority
W. Memphis, Ark.	6/18/59		Express	M & C	1950		1945		1953		1952		1949		1945			
Oakland Cal.	6/23/55	7/23/59	Express	M & C	1948	1960	1946	1958	1957	1959	1949	1958			1935	1960		
Oxnard, Cal.	6/18/59			M & C	1950	1960	1950	1953	P		1950	1953	1950		1950		'49–'52	Statute
Richmond, Cal.	8/15/56		Express	Council	1953		1928	P	1958		1954		1955	1959	1946	1960	1955	Charter
Sacramento, Cal.	11/26/57	4/10/59	Express	Council	1954	1959	1941	1957	P		1950	1959	1950	'57–P	1956	1960	1959	
San Francisco, Cal.	10/25/55	5/11/59	Implied	M & C	1956	'60–P	1951	1959	1958	'60–P	1955	'59–P			1959	1960	1945	Charter
Denver, Colo.	6/29/55	12/7/59	Express	M & C	1949	1960	1949	1958	1955	'57–P	1952	1957	1953		1956	1960	1958	Statute
Pueblo, Colo.	10/3/58	2/25/60	Implied	Council	1956	1959	1948	P	P		1953	P	1959	P	1931	1957	1956	Statute
New Haven, Conn.	16/26/57	3/2/60	Express	M & C	1954	1957	1953	'57–P	1954	1959	1956	1960			1926	'59–P	'42–'53	
Dist. of Columbia	6/29/55	9/1/59	Express	Commrs.	1955	'59–P	1957	1959	1955	1960	1953	'59–P	1958		1958	1960	1949	Statute
Jacksonville, Fla.	8/13/58	8/12/59	Both	Mayor	1953	1955	1956	1958	P		1942		1949	1953		1955		
Tallahassee Fla.	7/22/58	8/10/59	Both	M & C	1958	P	1958	P	P		1958				1958	1960	P	Statute
Tampa, Fla.	4/25/58	5/4/59	Express	M & C	1953		1957		P		1949	1953	P		1944	1956	P	Statute
Augusta, Ga.	8/26/56	1/16/59	Express	M & C	1955	1960	1957	1960	1955		1957	1960	1952	'60–P	1952	'60–P	1956	Con.-Stat.
Chicago, Ill.	1/12/55	10/26/59	Implied	Mayor					1956						1957		P	
Peroria, Ill.	9/8/58	9/25/59	Express	Council	1957	1958	1957	1958	1958		1957	1958	1958		1931	'54–P	1937	Statute
Gary, Ind.	3/26/58	3/7/59	Implied	M & C	1949		1949		1959		1949		1958		1957	1959	1959	
Indianapolis, Ind.	7/17/58	7/17/59	Express	Mayor	1925	1951	1925	1951	1921	1953	1925	1958	1957		1922	'51–P	P	
Des Moines, Iowa	5/14/59		Express	M & C	1955	1960	1958	1959	1959		1957		1947	1949	1953	1960	'40–P	Statute
Atchison, Kan.	11/24/59		Express	M & C	1935	1957	1935	1957	P		1935	1957	1957		1942	'58–P	P	
Witchita, Kan.	11/25/58	12/28/59	Express	Comm.	1941	1954	1946	'54–P	1957		1954	1959	1953	'58–P	1922	1957	'46–P	Statute
Hopkinsville, Ky.	6/4/58	8/7/59	Express	M & C	1946		1956	P	P		1958		1959		1959	1960		
Portland, Me.	7/11/55	8/3/59	Both	Council	1941	1959	1958		1951	'58–P	1931	'52–P	1946	1958	1946	1960	1946	Statute
Baltimore, Md.	2/24/55	11/24/59	Implied	Mayor	1941	1958	1952		1941	1954	1931	1946	1957		1931	1959	1941	Charter
Kalamazoo, Mich.	6/17/55	12/28/59	Express	Council	1918	1958	1918		1955	1957	1942	1957	1958	1958	1954	1960	1951	Statute
Muskegon, Mich.	7/29/57	9/28/59	Both	Council	1958	1960	1958		1958		1955		1947	1952	1952	1959	'47–'60	
Saginaw, Mich.	7/7/58	7/23/59	Express	Council	1960		1957	1958	1957	1959	1957			1959	1958	1960	1960	
Duluth, Minn.	9/29/58	11/20/59	Implied	Mayor	1937	1959	1949	1959	P		1955	1959	1948	P	1958	1960	P	
Minneapolis, Minn.	1/31/55	10/14/59	Express	M & C	1934		1909	'59–P	1956		1909	1959			1924			
Corinth, Miss.	6/11/59		Implied	M & C	1960		1960				1960		1958	1960	1946			
Kansas City, Mo.	4/6/55	12/3/59	Express	Council	1945	P	1945		1951	1956	1945			1956	1923	'52–P	1947	
Mexico, Mo.	10/3/58	11/24/59	Express	Council	P		P		1960		1956		1958		1953	1960	1954	
St. Louis, Mo.	4/20/55	11/6/59	Both	M & C	1945	1959	1945	'59–P	1948	'58–P	1945	'59–P			1950	1959	1958	Ordin.
Atlantic City, N. J.	11/9/57	3/23/59	Express	Mayor	1924	1959	1936	1940	1959		1924		1959		1929	1960	1959	Statute

APPENDIX D (Continued).

	Approval Date of Initial Wrk. Pgm. by HHFA	Latest HHFA Recertification	Authority to Adopt Workable Program: Express or Implied	Mayor or Council Approves Wrk. Pgm. for City	Ordinances in Workable Programs: When Enacted & Amended												Master Plan	
					Building		Electrical		Housing Standards		Plumbing		Subdivision Control		Zoning			
					Enacted	Amended	Enacted	Amended	Enacted	Amended	Enacted	Amended	Enacted	Amended	Enacted	Amended	Adopted	Authority
Passaic, N. J.	10/24/58	12/7/59	Express	M & C	1954		1954		1956		1958		1954		1954	1958	1952	Statute
New York, N. Y.	5/20/55	1/14/60	Implied	Mayor	1938	1960			State	laws					1916	1959		
Charlotte, N. C.	5/29/58	6/2/59	Express	M & C	1914	1959	1914	1956	1945	1948	1914	1956	1956	1959	1951	1957	1960	Statute
Cleveland, Ohio	6/6/55	11/4/59	Both	Mayor	1888	1949	1911	1949	1949	1960	1911	1949	1925		1929	1949	1949	Charter
Dayton, Ohio	6/10/55	7/23/59		M & C	1956	1960	1956	1960	1954	1959	1956	1960	1933	1957	1927	1958		
Portland, Ore.	9/19/57	3/20/59	Implied	M & C	1958	P	1956	P	1958	P	1942	P			1959	P	1958	Statute
Chester, Pa.	8/22/58	10/28/59	Implied	M & C	1928	'39–P	P		1956		1953		1952		1948	'60–P	1957	Statute
Harrisburg, Pa.	4/2/58	5/22/59	Both	M & C	1952	1955	1952	1955	1959				P		1950	1960	1950	Statute
Philadelphia, Pa.	2/8/55	9/1/59	Implied	Mayor	1956	1959			1956	1959			1956		1956	1960	1960	Charter
Pittsburgh, Pa.				Mayor	1947	1959	1953		1955		1901	1957	1920	P	1958	1960	1947	Statute
York, Pa.	8/5/57	11/4/59	Express	M & C	1957		1957		1957		1901	1937	1949		1950	1959	1957	
Providence, R. I.	3/26/58			M & C	1957				1956						1951		1945	Statute
Columbia, S. C.	7/14/59		Implied	M & C	1955	P	1949	P	1954	P	1955	P			1924	'49–P	P	Statute
Chattanooga, Tenn.	10/11/56	12/10/59	Express	M & C	1957		1957	1960	1953	1957	1957	1960	1955	1960	1949	'57–P	1928	Statute
Memphis, Tenn.	9/16/55	4/2/59	Express	Mayor	1949	1959	1900	1959	1900	1959	1900	'49–P	1942	1955	1921	1955	'25–'55	Statute
Nashville, Tenn.	11/7/55	2/25/60	Express	Mayor	1949	1957	1956	1959	1957		1941	'47–P	1938		1933	1960	1933	Statute
Austin, Tex.	11/5/56	5/6/59	Implied	Council	1931	P	1951	P	1950	P	1952		1946		1931		P	
Corpus Christi, Tex.	3/1/56	3/21/60	Implied	Council	1927	1957			1950	'60–P	1948	1959	1941	1959	1937	'48–P	1950	Statute
Lubbock, Tex.	10/11/56	2/12/59	Express	M & C	1950	1958	1954	1960	1957		1950	1959			1942	1954	1943	Statute
Tacoma, Wash.	12/12/57	4/5/60	Express	M & C	1953	1958	'60–P	P	1959	P	1959	P	1950		1953	'60–P		
Madison, Wis.	8/21/56	2/6/59	Express	Mayor	1931	'59–P	1931	1956	1954	1958	1931	1959	1949	1959	1922	1960	1959	Statute
Burlington, Vt.	1/15/60		Express	Mayor	1947	P	1947	P	1947	P	1947	P			1947	P	P	
Alexandria, Va.	9/24/57	2/24/59	Express	M & C	1939	1960	P	1959	1958	1959		1959	1939	1960	1951	1960	1951	Charter
Lynchburg, Va.	2/28/57	6/10/59	Implied	Council	1954		1953		1954		1949	P	1949		1949	P	P	
Norfolk, Va.	9/24/57	2/24/59	Implied	Council	1948		1956	1960	1951		1940	1960					1948	Statute
Richmond, Va.	8/19/55	2/17/60	Express	Council	1937	1953	1937	1954	1950		1937	1959	1955		1943	1960	1946	Statute

Note: "P" indicates pending legislation.

REHABILITATION AND CONSERVATION*

H. N. Osgood† and A. H. Zwerner‡

I

Urban Growth and Blight

Urban blight has emerged with increasing clarity as one of the less agreeable consequences of urban growth and change. It is presently one of the most serious problems facing American cities. Since the First Decennial Census in 1790, the proportion of urban population has increased from five per cent of the total to sixty-four per cent in the 1950 Census, and final 1960 Census figures will probably show a still higher proportion. The rapid growth of large cities has been characteristic; and, during the last three decades, the growth has been even more rapid in the suburbs and unincorporated fringes. Because city boundaries have changed little and areas for development within them have mostly disappeared, new developments have generally been beyond these boundaries. According to the preliminary 1960 Census figures, the suburban population has jumped almost fifty per cent in the last decade.

Concentrated urban living has focused attention upon the physical deterioration of cities, particularly central portions, and the social and economic conditions of slum and blighted areas. In 1956 slightly less than twenty-four per cent of all the dwelling units in the nation were found to be either dilapidated or deficient in plumbing. This represents a numerical total of 12.6 million dwelling units. Only seventy-six per cent of all occupied dwelling units in the nation in 1956 were in good condition and provided bath, private toilet, and hot running water.[1]

The clearance and prevention of slums and blight are primarily local problems which require local solutions varying in detail from place to place. It is only because of the vast accumulation of blight and the limitations of available local resources that the problem has attracted national attention and demanded federal participation. The federal government's role has been to furnish necessary financial assistance to those cities meeting the objectives set up by the Congress.

Legislation primarily intended to assist American communities in coping directly with local problems of urban blight was first enacted in the Housing Act of 1949.[2] After more than ten years of operation under the federal statute, with its subsequent amendments—particularly the major amendments in the Housing Act of 1954[3]—

* The legal views and studies in this article are those of Mr. Zwerner and do not purport to reflect the opinions of the Housing and Home Finance Agency.

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[1] 3 U.S. Dep't of Commerce, Bureau of the Census, 1956 National Housing Inventory, Characteristics of the 1956 Inventory, United States and Regions, pt. 1, at 16, 17 (1959).

[2] 63 Stat. 413 (1949), 42 U.S.C. §§ 1441-63 (1958).

[3] 68 Stat. 622, 42 U.S.C. § 1451 (1958).

thirty-eight urban renewal projects had been completed in thirty communities; there were 431 urban renewal projects with contracts authorized in 274 locations; and 328 additional projects were in the planning stage in 256 communities. In round figures, in connection with these activities, 65,000 parcels of real estate had been acquired by local public agencies, aggregating 7,750 acres of land; 103,000 families had been relocated from urban renewal areas into standard housing units; 117,000 dwelling units in 60,000 structures had been demolished; and 2,400 acres of land had been disposed of by the local agencies. In financial terms: $1,402 million of urban renewal grant funds had been reserved for projects; $935 million had been formally committed through federal grant contracts with local public agencies; $1,359 million for planning advances and definitive and temporary loans had been committed; and $309 million had been disbursed for urban renewal, relocation, and demonstration grants.

An increasing number of projects include rehabilitation as one of the methods used to deal with the problems of slum and blight. At the close of 1959, grant reservations had been approved for 120 projects involving rehabilitation, of which eighty-one are in the planning stage and thirty-nine are under federal grant contract. These projects, in total, embrace some 28,500 acres, three-fifths of which will be rehabilitated. Only about one-third of the nearly 231,000 dwelling units in these projects are scheduled for clearance.

II

URBAN RENEWAL BY REHABILITATION

Urban renewal under the federal statute[4] contemplates a broad and inclusive series of actions for the elimination and prevention of slums and blight within appropriately selected areas. An urban renewal project may involve separately slum clearance and redevelopment, or rehabilitation and conservation, or a combination of such undertakings. The federal statute defines an urban renewal area to mean a slum area or a blighted, deteriorated, or deteriorating area approved as appropriate for an urban renewal project,[5] but does not distinguish between rehabilitation and conservation. The terms are used interchangeably—distinctions between rehabilitation and conservation sometimes made by some writers relate to differences in degree. For purposes of this discussion, conservation and rehabilitation are regarded as synonymous under the federal statute.

Broadly, urban renewal by rehabilitation seeks to eliminate environmental and structural deficiencies which, if not adequately and timely dealt with, will create within the area such degree of blight that the only alternative is clearance and redevelopment. Generally, environmental deficiencies include poor land utilization, incompatible land uses, lack of adequate public facilities, and unsafe, congested street patterns and traffic hazards. Structural deficiencies may run the gamut from such unsafe and insanitary conditions as require demolition of some buildings to lesser

[4] 63 Stat. 413 (1949), 42 U.S.C. § 1441 (1958).
[5] 63 Stat. 380 (1949), 42 U.S.C. § 1460(a) (1958).

deficiencies correctable by improvement and repair. Accordingly, rehabilitation of an area may include some demolition and clearance, whereas if all or most of the structures were cleared the undertaking would not be characterized as a "rehabilitation" project.

As related to structures, rehabilitation can include all of the traditional elements of building alterations and additions, as well as repairs, maintenance, and other improvements. Annual expenditures for non-farm home improvements and care alone attest that rehabilitation is big business—although not as yet established as an identifiable component of the construction industry. In 1959, estimated over-all expenditures of $11.235 billion were made for non-farm home improvements—$4.435 billion for additions and alterations and $6.800 billion for maintenance and repairs.[6]

The rehabilitation process of urban renewal involves the exercise of traditional powers of state and local governments, *in concert* with private actions, in a manner *planned* to eliminate or prevent deterioration of the urban renewal area. The protection of the public health, safety, and welfare; the prudent management of municipal services; and the balancing of those services with constantly increasing tax demands are not new. Neither is the common-sense principle of protecting public and private investment. These underlie every action and component of *planned rehabilitation*. However, there is now a significant, increased emphasis on *planned rehabilitation*. Implicit in this concept are: (1) *planned rehabilitation* actions by public bodies and agencies specifically empowered to act for this purpose under state and local law; (2) the focusing of special efforts in specifically designated geographical project areas within the jurisdiction of these public bodies; and (3) the organized and concerted application and execution of both public and private actions required under approved urban renewal plans.

III

REHABILITATION LEGISLATION IN URBAN RENEWAL PROGRAM

A. Federal Legislation

Rehabilitation was not authorized as part of the federal urban renewal program until the enactment of the Housing Act of 1954. Prior to 1954, the Housing Act of 1949 authorized only slum clearance and urban redevelopment. In the transition from slum clearance and redevelopment to urban renewal and planned rehabilitation, the original provisions for federal financial assistance were not changed. Three types of financial assistance are authorized: (1) advances—to enable local public agencies to prepare project surveys and plans; (2) loans—to finance the local public agencies' costs of project planning, assembly, clearance, and preparation of project land for disposition for uses in accordance with the approved redevelopment plan; and (3) capital grants—payable to local public agencies to help finance the difference between (a) the cost of project undertakings and (b) the proceeds from disposition of project

[6] See appendix to this article.

land. In connection with urban renewal projects, as with respect to slum clearance and redevelopment projects, the federal grant may not exceed two-thirds of net project costs and the remaining one-third is required to be provided locally by way of cash, land, necessary site work or improvements, or supporting facilities.[7] (Under an alternative formula the federal share is three-fourths of the net cost of the project, with the net project cost computed on a basis which eliminates certain administrative, legal, survey, and planning expenses from the project cost.)

Federal financial assistance continues to be subject to the following requirements: an advisory public hearing; the approval of the redevelopment plan; a showing that the redevelopment plan conforms to a general plan for the locality as a whole; a showing that maximum opportunity was afforded for redevelopment by private enterprise; and a feasible relocation plan to assure the relocation of families displaced from the project area.

The compelling need for a more comprehensive attack on the problems of urban slums and blight was clearly identified and the urban renewal and planned rehabilitation concepts were developed by the President's Advisory Committee on Government Housing Policies and Programs of 1953.[8] In its report submitted in December 1953, the President's Committee found slums were growing faster than they were being cleared—and hence the slum clearance and redevelopment program under the 1949 Act, while useful, was not adequate for the prevention and elimination of slums. In its deliberations the Committee recognized that the heart of an urban renewal effort must be rehabilitation—unless the nation is prepared not only to give up its gigantic investment in a large portion of its existing structures, but also to step up its outlays for clearance and redevelopment to a level that staggers the imagination.

In its Report, the President's Committee recommended that,[9]

> The Program of Federal loans and grants established by title I of the Housing Act of 1949 should be broadened. It should provide assistance to communities for rehabilitation and conservation of areas worth saving as well as for the clearance and redevelopment of wornout areas. It should make Federal loans and grants available for well-planned neighborhood projects at any stage of the urban renewal process provided they will clear blight and establish sound healthy neighborhoods.

The recommendation of the Committee was supported by the Economic Report of the President submitted to the Congress on January 28, 1954, which stated:[10]

> A successful fight against blight can be waged in these cities only if it is planned and carried forward on a basis sufficiently broad to improve the character of a whole neighborhood. This calls for determined action at the local level in the planning and administration of broad and soundly conceived programs of neighborhood rehabilitation. In some cases, urban blight can be corrected only by the total clearance of an area and its sub-

[7] 68 Stat. 622, 42 U.S.C. § 1451 (1958).
[8] PRESIDENT'S ADVISORY COMM. ON GOVERNMENT HOUSING AND PROGRAMS, RECOMMENDATIONS (1953).
[9] *Id.* at 5.
[10] ECONOMIC REPORT OF THE PRESIDENT 86 (1954).

sequent redevelopment; more frequently, however, the need is for selective demolition and rehabilitation, thus conserving and renewing what is still useful in older neighborhoods.

The recommendations of the President's Committee were promptly developed by the Housing Agency and translated into legislative recommendations for the 1954 session of the Congress. After extensive hearings, the Congress enacted the Housing Act of 1954, which was approved by the President on August 2, 1954.[11]

As indicated above, the 1954 urban renewal amendments of interest to this discussion preserved the basic form of federal financial assistance and the federal-local relationships established under the original slum clearance and redevelopment program. However, the Workable Program requirement and the program for the rehabilitation and conservation of blighted areas were new.

The Workable Program requirement, which is treated separately in this symposium,[12] further implements the National Housing Policy established in the Housing Act of 1949. It is a development beyond the original requirement that the Housing Administrator, in extending financial assistance for urban renewal, give consideration to the extent to which local public bodies have undertaken positive programs for the encouragement of housing cost reductions and for preventing the spread or recurrence of slums and blight through the adoption, improvement, and modernization of local codes and regulations relating to land use and adequate standards of health, sanitation, and safety for dwelling accommodations.

The 1954 amendments also included new FHA programs important to the urban renewal objectives. A new section 220 of the National Housing Act authorized mortgage insurance for the rehabilitation of existing dwellings or the construction of new housing in urban renewal areas.[13] A new section 221 of the National Housing Act authorized special FHA mortgage insurance for new construction or rehabilitated housing anywhere in the community to assist in relocating families displaced as a result of urban renewal and other governmental actions.[14]

B. State Legislation

The enactment of state and local slum clearance and urban renewal legislation largely has been in anticipation of, or responsive to, the development of the federal

[11] 68 Stat. 622, 42 U.S.C. § 1451 (1958). Housing Administrator Norman P. Mason, in his testimony in *Hearings Before a Subcommittee of the Senate Committee on Banking and Currency on Housing Legislation of 1960*, 86th Cong., 2d Sess. 950 (1960), reiterated the underlying principle of planned rehabilitation when he testified:

"It is sheer folly to permit good neighborhoods to deteriorate to the point where they need extensive rehabilitation or clearance. Even the wealthiest nation in the world cannot afford to tear down and rebuild all its urban property which is affected by spreading blight. For urban renewal to succeed, we must emphasize the rehabilitation of areas which it is still economically feasible to save and the conservation of areas which are threatened with blight."

[12] See article by Rhyne, *The Workable Program—A Challenge of Community Improvement*, elsewhere in this symposium.

[13] 68 Stat. 596 (1954), 12 U.S.C. § 1715k (1958).

[14] 68 Stat. 599 (1954), 12 U.S.C. § 1715*l* (1958).

aid programs.[15] As in the case of the federal legislation, the related enabling legislation in the various states originally authorized only slum clearance and redevelopment as distinguished from the broad urban renewal program. With respect to the initial federal program of slum clearance and redevelopment under the Housing Act of 1949, thirty-two states, along with the District of Columbia, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, had enacted enabling legislation by the end of 1953.

Following the passage of the 1954 urban renewal amendments to the federal statute, twenty-eight states, the District of Columbia, Puerto Rico, and the Virgin Islands amended or supplemented their earlier slum clearance and redevelopment statutes to authorize participation in the new urban renewal program. Also, some eleven states enacted legislation for the first time, including powers for both slum clearance and the broader urban renewal activities. As of January 1960, only the states of Idaho, Utah, Wyoming, and the territory of Guam had not enacted legislation for either slum clearance and redevelopment or urban renewal.

Generally, state statutes conferring urban renewal powers include those powers theretofore authorized to be exercised in connection with slum clearance and redevelopment. In addition to the power of eminent domain and the taxing power, the police power is brought into play. Also continued is the earlier pattern either of qualifying the city itself or the local housing authority, or else permitting the establishment of a specially created public body to carry out the broader urban renewal activities. Some of the more recent statutes also expressly provide for the adoption of workable programs in line with the requirements of the federal statute.[16] The policy of maximum opportunity for participation by private enterprise continues to be emphasized and encouraged.[17]

As already stated, enabling statutes have been adopted in all jurisdictions, except three states and the territory of Guam, for the purpose of accomplishing the broad objectives of the urban renewal program. Aside from the broadly delegated police

[15] Not included within this reference are the earlier state statutes relating to slum clearance coupled with low-rent public housing, or to state or municipal or private urban redevelopment. Also, it should be noted that some local slum clearance and redevelopment programs without Federal aid were initiated before the enactment of the Housing Act of 1949. See People *ex rel.* Tuohy v. City of Chicago, 394 Ill. 477, 68 N.E.2d 761 (1946); People *ex rel.* Tuohy v. City of Chicago, 399 Ill. 551, 78 N.E.2d 285 (1948); and Belovsky v. Redevelopment Authority of Philadelphia, 357 Pa. 329, 54 A.2d 277 (1947), which upheld such programs in Illinois and Pennsylvania.

Express constitutional provisions relating to slum clearance and urban redevelopment have been adopted in California, Georgia, Maryland, Missouri, New Jersey, New York, and Rhode Island. Of these, the provisions in Maryland, Missouri, New Jersey, and New York were adopted prior to the enactment of the Housing Act of 1949.

In Ohio it has been held that urban redevelopment is a proper function of municipal government which municipalities are authorized to undertake by the home rule provisions of the State Constitution. OHIO CONST. art. XVIII, § 3 (1912). See State v. Rich, 159 Ohio St. 13, 110 N.E.2d 778 (1953).

For a much fuller treatment of the history of state urban redevelopment legislation see Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, 9 WASH. & LEE L. REV. 173 (1952).

[16] See, *e.g.*, ME. REV. STAT. ANN. ch. 90-B, § 4 (1959 Cum. Supp.); Mo. REV. STAT. § 99.320(23) (1959 Cum. Supp.); MONT. REV. CODES ANN. tit. 11, ch. 39, § 11-3904 (1959 Cum. Supp.).

[17] See, *e.g.*, KAN. GEN. STAT. ANN. § 17-4744 (1955 Supp.); ME. REV. STAT. ch. 90-B, § 15 (1959 Cum. Supp.); MONT. REV. CODES ANN., tit. 11, ch. 39, § 11-3903 (1959 Cum. Supp.).

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powers for the adoption of local laws to aid in protecting the public health, safety, and welfare, some states have adopted additional statutes which are particularly important to the rehabilitation phase of urban renewal. These statutes, in general, expressly authorize municipalities to adopt measures requiring the repair, closing, or demolition of dwellings unfit for human habitation.[18]

IV

THE COURTS AND URBAN RENEWAL

The constitutionality of planned rehabilitation rests, for the most part, on the large body of decisions which have sustained slum clearance and redevelopment. Those decisions and the well-established and increasing recognition of the police power in the fields of land use and building restrictions will support (when appropriately authorized and executed) those activities generally regarded as essential to achieve the rehabilitation objectives of urban renewal.

That the courts have played a major supporting role in the efforts to renew our cities is witnessed by the decisions of the Supreme Court of the United States and of the highest courts of twenty-nine states, the District of Columbia, and Puerto Rico sustaining local slum clearance and redevelopment legislation and project activities against a variety of constitutional and procedural attacks. Three state supreme courts struck down local slum clearance and redevelopment statutes as unconstitutional—Georgia, Florida, and South Carolina.[19] Of these initial thirty-two decisions, twenty-seven were handed down after the passage of the Housing Act of 1949. Since the beginning of the urban renewal program in 1949, there have been over 200 cases filed in thirty-four jurisdictions with respect to urban renewal projects and undertakings, exclusive of routine condemnation cases. Of these, fifty-five were dismissed in the trial court without a ruling on the merits; twenty-five were disposed of in either the trial court or on intermediate appeal, on the merits of the case; and ninety-four have been disposed of by either the state court of last resort or a federal court. The majority of these ninety-four cases involve questions of the constitutionality of the enabling acts; others challenge the proceedings and findings of the administrative bodies; and some involve such issues as discrimination in the relocation of occupants.

Litigation affecting the validity of slum clearance and redevelopment has reached the courts in various ways. The cases have arisen not only in connection with em-

[18] See, *e.g.*, IND. STAT. ANN. tit. 35, ch. 27, § 35-2701 (1949); N.C. GEN. STAT. ch. 160, art. 15, § 160-182 (1952); and WASH. REV. CODE tit. 35, ch. 35.80, § 35.80.010 (1959).

[19] See Housing Authority of City of Atlanta v. Johnson, 209 Ga. 560, 74 S.E.2d 891 (1953); Adams v. Housing Authority of City of Daytona Beach, 60 So.2d 663 (Fla. 1952); Edens v. City of Columbia, 228 S.C. 563, 91 S.E.2d 280 (1956). However, in Grubstein v. Urban Renewal Agency of the City of Tampa, 115 So.2d 745 (Fla. 1959), the Supreme Court of Florida sustained the constitutionality of the Tampa urban renewal law as it applied to a project involving redevelopment of a slum (as distinguished from blighted) area. The court distinguished the *Adams* case in which it had held unconstitutional an earlier state-wide statute providing for clearance and redevelopment of blighted areas. The *Johnson* case in Georgia is no longer effective because of a constitutional amendment and new legislation, which were sustained in Bailey v. Housing Authority of the City of Bainbridge, 214 Ga. 790, 107 S.E.2d 812 (1959).

inent domain proceedings, but also in suits brought by property owners challenging the validity of administrative proceedings and findings prior to initiating land acquisition. Many of these cases arose in the form of a petition for injunctive relief to prevent the local public body or official from pursuing further urban renewal activities. The chief issue which has been litigated in all jurisdictions is whether a public use or purpose exists to justify the use of eminent domain and the expenditure of public funds.[20] As evidenced by the overwhelming weight of decisions upholding slum clearance and redevelopment, the courts have almost uniformly held that a public use or purpose constitutionally exists for such activities.

Although most courts uphold slum clearance as a public use or purpose, certain other factors have influenced the scope of decisions in this field. The future re-use of the project area has been considered relevant by some courts in determining whether a public use exists, especially when plans call for commercial re-use of an area.[21] In an overwhelming majority of the cases the courts have sustained the acquisition of property for redevelopment purposes if the area involved qualifies as substandard under the applicable statutory definition.[22] A few cases, however, attempt to distinguish (on the basis of the degree of deterioration and obsolescence) as to what kinds of areas may be taken over and cleared for redevelopment. One of the cases (Delaware) contains a dictum questioning that no public use is involved in the acquisition of a blighted (as distinguished from slum) area as defined in the state redevelopment act.[23] Although the taking of some vacant land has been justified on the ground that such acquisition was necessary to assure the proper redevelopment of the blighted area as a whole, the question whether vacant land as a general matter constitutes an appropriate subject for redevelopment has been raised in only a few decisions. However, there have been at least four state court decisions sustaining the use of eminent domain in connection with the redevelopment of predominantly vacant lands where there is some element of blight.[24] The

[20] Courts generally do not differentiate between the "public use" required to justify eminent domain and that required to authorize the expenditure of public funds. *But cf.* Crommett v. City of Portland, 150 Me. 217, 107 A.2d 841 (1954).

[21] See Housing Authority of City of Atlanta v. Johnson, 209 Ga. 560, 74 S.E.2d 891 (1953); Edens v. City of Columbia, 228 S.C. 563, 91 S.E.2d 280 (1956); Bristol Redevelopment and Housing Authority v. Denton, 198 Va. 171, 93 S.E.2d 288 (1956). Future use for commercial purposes is generally upheld. Future use for educational purposes was challenged but upheld. See Boro Hall Corp. v. Impellitteri, 128 N.Y.S.2d 804 (Sup. Ct. 1954), *aff'd*, 283 App. Div. 889, 951, 130 N.Y.S.2d 6, 887 (2d Dep't 1954), *appeal dismissed*, 307 N.Y. 672, 120 N.E.2d 847 (1954); and Bleecker Luncheonette v. Wagner, 141 N.Y.S.2d 293 (Sup. Ct. 1955), *aff'd*, 286 App. Div. 828, 143 N.Y.S.2d 628 (1st Dep't 1955), *appeal dismissed*, 143 N.Y.S.2d 824 (1st Dep't 1955), 309 N.Y. 1029, 128 N.E.2d 760 (1955).

[22] Such areas have been classified and defined in the various state redevelopment statutes as slum areas, blighted areas, deteriorated areas, decadent areas, substandard and insanitary areas, and redevelopment areas.

[23] Randolph v. Wilmington Housing Authority, 139 A.2d 476 (Del. 1958). See also Adams v. Housing Authority of the City of Daytona Beach, 60 So.2d 663 (Florida 1952), where the Florida Supreme Court found constitutional objection to the redevelopment of a "blighted" area.

[24] See, *e.g.*, Redevelopment Agency of City and County of San Francisco v. Hayes, 122 Cal. App.2d 777, 266 P.2d 105 (1954), *cert. denied sub nom.* Van Hoff v. Redevelopment Agency, 348 U.S. 897 (1954); People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953); Oliver v. City of Clairton, 374 Pa. 333, 98 A.2d 47 (1953). In the *Gutknecht* case, *supra*, the Illinois court

Supreme Court of Rhode Island, in an advisory opinion, upheld the taking of blighted areas for private redevelopment, but so interpreted the statute as to deny the right to take vacant or unblighted land, standing by itself, for such purposes.[25] The Maine court did not pass upon the constitutionality of a section of the redevelopment act relating to the acquisition of undeveloped vacant land.[26]

Other constitutional issues have at times been raised in opposition to the validity of various state statutes. Such issues include whether redevelopment statutes involve an unconstitutional delegation of legislative power to local public bodies; whether a statute is too vague for proper administration or whether it contains reasonable standards to guide a planning board or governing body in making determinations under the act; whether redevelopment laws embrace more than one object (and whether such object is adequately expressed in the title of the law); whether statutes, by allowing sales of property by public bodies at a price less than that paid for such property or expended upon it, authorize the lending of credit, or the granting of a special privilege, by a state or municipality to a private individual or corporation; whether redevelopment acts contain unreasonable classifications of persons or property; whether the financing provisions of various redevelopment laws contravene constitutional debt limitations; and, finally, whether the public-hearing provisions of various state laws are adequate to meet constitutional due-process requirements.[27] Courts have consistently upheld statutes against contentions of this type.

Assuming the constitutionality of a state statute as applied to a particular undertaking in question, certain other problems have also arisen. Although a project area as a whole may meet the statutory criteria of slum or blight, there are fre-

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sustained the constitutionality of a statute dealing specifically with the redevelopment of areas of predominantly blighted open land for residential purposes. This court later extended its holdings in the *Gutknecht* case and upheld the constitutionality of a statute relating to the acquisition and redevelopment of blighted open areas for commercial and industrial re-use. People *ex rel.* Adamowski v. Chicago Land Clearance Commission, 14 Ill.2d 74, 150 N.E.2d 792 (1958).

[25] Opinion to the Governor, 76 R.I. 249, 69 A.2d 531 (1949). In 1952, in a litigated case, the Rhode Island Supreme Court sustained the constitutionality of a subsequent redevelopment act in its application to a project which concerned the clearance and redevelopment of a slum-blighted area as defined in the statute. As to the validity of taking vacant land, the court made no intimation one way or the other. Ajootian v. Providence Redevelopment Agency, 80 R.I. 73, 91 A.2d 21 (1952). See also constitutional amendment of 1955, R.I. CONST. art. XXXIII, § 1 (1957).

[26] Crommett v. City of Portland, 150 Me. 217, 107 A.2d 841 (1954). See also, Papadinis v. City of Somerville, 331 Mass. 627, 121 N.E.2d 714 (1954), where the court withheld ruling on the validity of redevelopment of a "blighted open area," but in a later advisory opinion the court indicated that redevelopment of such an area constituted a public purpose. Opinion of the Justices, 334 Mass. 760, 135 N.E.2d 665 (1956).

[27] Although the provisions of state law for the holding of legislative-type hearings have unanimously been sustained against constitutional attack, they have been subject to some criticism by writers, on the basis that the hearings pragmatically afford little or no protection to property owners. See, *e.g.*, Sullivan, *Administrative Procedure and the Advocatory Process in Urban Redevelopment*, 45 CALIF. L. REV. 134 (1957); Note, *Judicial Review of Urban Redevelopment Agency Determinations*, 69 YALE L. J. 321 (1959); Note, *Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration*, 72 HARV. L. REV. 504, 513 (1959). The Yale note suggests several statutory solutions designed to reconcile conflicting interests and provide property owners with a fair opportunity to challenge a project, without resulting in undue delay and disruption of a project.

quently located within the designated area structures which are neither substandard nor deteriorated and some vacant parcels of land. Owners of these properties have often sought to invalidate a project in so far as it included such standard structures or vacant land. Courts have unanimously upheld such takings on the theory that once the area as a whole has been determined to meet the statutory criteria of slum or blight, it is a legislative and not a judicial question as to what structures and land in the area will be taken.[28] Similarly, it has been held not to be an abuse of discretion to allow certain structures to remain in a projected area.[29]

Other side issues have been tried and determined by the courts in several states. The California law authorizes owner participation in urban redevelopment projects, but the court rejected an attack upon one project where owner participation was refused.[30] In New York, after a series of suits, the courts sustained the validity of a sale of project property to a religious institution.[31] Recently in New Jersey, the court remanded a case on the ground that a conflict of interest existed on the part of certain members of the city council.[32]

In view of the overwhelming judicial approval of the use of eminent domain and the expenditure of public funds in slum clearance and urban redevelopment projects, it seems doubtful that such projects will be successfully challenged on the ground that urban renewal is unconstitutional. For the past several years the emphasis in the decisions in this area has shifted from the question of constitutionality to various other questions, particularly the scope of judicial review of determination of blight.[33] As more urban renewal projects advance from the planning to the

[28] See, *e.g.*, Berman v. Parker, 348 U.S. 26 (1954); Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 104 A.2d 365 (1954); Starr v. Nashville Housing Authority, 145 F. Supp. 498 (M.D. Tenn. 1956), *aff'd*, 354 U.S. 916 (1957). Most courts have also reasoned that urban redevelopment and renewal is predicated upon an area concept, and once an area has been properly found to meet statutory criteria of slum or blight, the taking of any structure therein, whether or not substandard, cannot be challenged. Courts recognize that property may be needed to assure carrying out a feasible plan of redevelopment.

[29] McAuliffe and Burke Co. v. Boston Housing Authority, 334 Mass. 28, 133 N.E.2d 493 (1956).

[30] Fellom v. Redevelopment Agency of the City and County of San Francisco, 157 Cal. App.2d 243, 320 P.2d 884 (1958), *review denied*, 358 U.S. 56 (1958).

[31] 64th Street Residences, Inc. v. City of New York, 4 N.Y.2d 268, 150 N.E.2d 396 (1958), *cert. denied sub nom.* Harris v. City of New York, 357 U.S. 907 (1958).

[32] Griggs v. Borough of Princeton, 162 A.2d 862 (N.J. Sup. Ct. 1960).

[33] On the question of the scope of judicial review exercised by the courts with regard to urban renewal project findings and determinations and the conclusiveness of such findings and determinations, see the following cases where the court upheld the validity of the project in question: Berman v. Parker, 348 U.S. 26 (1954); Starr v. Nashville Housing Authority, 145 F. Supp. 498 (M.D. Tenn. 1956), *aff'd*, 354 U.S. 916 (1957); Donnelly v. District of Columbia Redevelopment Land Agency (D.C. 1958), *aff'd*, 269 F.2d 546 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 949 (1960); Despatchers' Cafe, Inc. v. Sommerville Housing Authority, 332 Mass. 259, 124 N.E.2d 528 (1955); Worcester Knitting Realty Co. v. Worcester Housing Authority, 335 Mass. 19, 138 N.E.2d 356 (1956); Bowker v. City of Worcester, 334 Mass. 422, 136 N.E.2d 208 (1956); Kaskel v. Impellitteri, 306 N.Y. 73, 609, 115 N.E.2d 659, 832 (1953), *cert. denied*, 347 U.S. 934 (1954); Oliver v. City of Clairton, 374 Pa. 33, 98 A.2d 47 (1953); Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A.2d 612 (1950); Babcock v. Community Redevelopment Agency of the City of Los Angeles, 148 Cal. App.2d 38, 306 P.2d 513 (1957); Allen v. City Council of Augusta, 215 Ga. 778, 113 S.E.2d 621 (1960); and Graham v. Houlihan, 147 Conn. 321, 160 A.2d 745 (1960), *cert. denied*, 364 U.S. 833 (1960).

execution stage it is to be expected that future litigation will involve the validity and eligibility of individual projects under state and local laws.[34]

The scope of review of the findings of cities and other local public bodies has been limited as a result of holdings that these findings are legislative in character. In the words of the Supreme Court of the United States:[35]

> Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation. . . . The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one.

The limited nature of judicial review in these cases is exemplified to an extreme in a recent decision handed down by the Supreme Court of Georgia, which, as the result of a constitutional amendment, reversed an earlier unfavorable decision. The Georgia court, in the case of *Allen v. City Council of Augusta*,[36] indicated that a determination of the existence of slum and blight by a redevelopment agency and a community is virtually conclusive; and therefore the responsibility for imposing reasonable limits on the exercise of judicially-approved urban renewal powers rests with cities and redevelopment agencies and not with the court. The court would go no further than find that the required legislative actions had been taken; it would not review whether such actions were supported by evidence.

The validity of slum clearance and urban redevelopment projects in their fullest aspect has been overwhelmingly sustained by the courts of last resort. In so far as slum clearance and urban redevelopment undertakings are concerned, the question of public use or purpose has been laid to rest. Subsidiary legal issues involved in the more comprehensive urban renewal undertakings, including conservation and rehabilitation activities, have not reached the courts. In one state, a statute authorizing conservation activities has been held constitutional,[37] but in no reported case has an actual project been tested. However, in view of the general judicial approval of the constitutionality of urban redevelopment statutes and undertakings, it would seem

[34] In both Virginia and Connecticut, where the general principle of slum clearance and urban redevelopment had been sustained by the courts as being constitutional, the question of the finality as to findings of fact by the body charged with that responsibility came to the attention of the highest court of the state. In the case of Bristol Redevelopment and Housing Authority v. Denton, 198 Va. 171, 93 S.E.2d 288 (1956), the Supreme Court of Appeals of Virginia held that under the factual situation presented by the record, a proposed area for a redevelopment project was not blighted or deteriorated within the purview of a statute authorizing the taking of property for slum clearance and redevelopment purposes. In Bahr Corp. v. O'Brion, 146 Conn. 237, 149 A.2d 691 (1959), the Connecticut Supreme Court of Errors, citing the proposition that redevelopment agency determinations are subject to judicial review to discover if they are unreasonable or in bad faith or are an abuse of the power conferred, held that the trial court erred in refusing to admit evidence that the inclusion of plaintiff's property within the project area was unreasonable, arbitrary, and an abuse of the agency's power.

[35] Berman v. Parker, 348 U.S. 26, 32 (1954).

[36] 215 Ga. 778, 113 S.E.2d 621 (1960).

[37] People *ex rel.* Gutknecht v. City of Chicago, 3 Ill. 2d 539, 121 N.E.2d 791 (1954); Zisook v. Maryland-Drexel Neighborhood Redevelopment Corp., 3 Ill. 2d 570, 121 N.E.2d 804 (1954). These cases upheld conservation as a public use but did not involve application of conservation techniques to an actual project.

reasonable to assume that courts which may in the future consider any new problems will have a firm basis upon which to sustain the validity of comprehensive statutes authorizing rehabilitation and conservation activities.[38]

The constitutionality of planned rehabilitation rests basically, as in the case of slum clearance and urban redevelopment, upon the proper exercise of the police power, the power of eminent domain, and the power of taxation. Of course, at the state and local level every action under the police power and the power of eminent domain and the expenditure of public funds may be scrutinized by the courts, but there are no basic constitutional bars to their being made effectively available to rehabilitate deteriorating areas. The constitutional issues with respect to these powers are posed in such completely malleable terms as "public purpose," "public use," "due process," and "reasonableness." In view of the legislative and judicial perception of expanded municipal actions necessary to protect the health, safety, and welfare of the community, it is reasonable to conclude that the comprehensive undertakings essential in the urban renewal process are constitutionally sound.

However, the existence of favorable constitutional decisions is not enough. There is still placed upon cities and redevelopment agencies the responsibility of imposing reasonable limits on the exercise of judicially-approved urban renewal powers.[39] There remains within the field of constitutionally permissible legislative action a choice of means. Among various means—various sanctions—what is at stake for the individual varies. On this, both the wisdom and the constitutionality of a measure may depend. An urban renewal program must be developed specifically with a view to the problems which the particular community faces, can expect to face, and hopes to avoid. Because the detailed problems are so varied, they suggest a broad range of possible public and private actions. This very large area of choice requires of responsible local officials sufficient technical capacity and sense of practicality to achieve a delicate balance of purpose in the administration of a program where individual property rights are sharply affected at the point where they begin to interfere adversely with the interests of the community.

Simon E. Sobeloff, former Solicitor General of the United States, who argued the *Berman* case for the Government, had this to say as to the significance of that decision to persons engaged in urban renewal activities:[40]

[38] Note the broad language of the Supreme Court in Berman v. Parker, 348 U.S. 26, 33 (1954): "The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

[39] The courts have indicated that there are limits to what can be done in the name of "redevelopment." See Berman v. Parker, 348 U.S. 26 (1954); and Donnelly v. District of Columbia Redevelopment Land Agency (D.C. 1958), *aff'd*, 269 F.2d 546 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 549 (1960).

[40] Remarks of Simon E. Sobeloff at Annual Convention of National Association of Housing and Redevelopment Officials, at Cleveland, Ohio, Oct. 19, 1955. Mr. Sobeloff is now Chief Judge, United States Court of Appeals for the Fourth Circuit.

To say that a specific act is constitutional is to say no more than that the constitution does not prohibit government from acting. Whether government should take a particular action is not for the courts to decide. The wisdom of governmental action is the responsibility of legislators and administrators. An act may be constitutional but exceedingly unwise and, by the same token, we all know that acts thought exceedingly wise by some people may be very unconstitutional. It is, therefore, one thing to say that the decisions of our supreme courts indicate that the states have the power drastically to regulate and even take private property for the purposes of urban renewal. It is quite another thing to say that there are no limits imposed upon cities, redevelopment commissions, health departments, and housing authorities. These powers must be first clearly delegated by the people and then exercised with prudence, reason, and care. Ill considered exercises of power that the public will not accept, although constitutional, may work more mischief to urban renewal than an adverse court decision.

To those of you who share the responsibility for these activities, allow me a word of admonition. The most complete legislative authorization, the clearest sanction of your supreme court, and the most workable of workable programs are no better than the wisdom, the understanding, and devotion applied by those who administer and carry out the day-to-day work. The overriding public interest that gives you power must be constantly nurtured with understanding and you must act with due moderation and mindfulness of the rights and needs of an individual.

V

LOCAL CODES: THE CRUX OF PLANNED REHABILITATION

An urban renewal project may consist solely of slum clearance and redevelopment (land acquisition, site clearance and preparation, land disposition and redevelopment), or planned rehabilitation, or a combination of both such undertakings.[41] Whether planned rehabilitation constitutes all or only a part of the urban renewal project undertakings, the objectives to be achieved are common to all actions, and there should be available for exercise, if necessary, the basic constitutional and legal powers of eminent domain, taxation, and the police power. Methods and techniques and the extent of public actions to be taken will vary in form and degree depending upon project site characteristics and the applicable urban renewal plan. Public powers and actions essential for successful planned rehabilitation consist of (1) taxation and eminent domain to provide public facilities and improvements; (2) eminent domain to eliminate conditions of slum and blight and to secure compatible land uses when these objectives cannot otherwise be achieved; and (3) the police

[41] An example of urban renewal involving both slum clearance and planned rehabilitation is the Springfield, Oregon, Third Street Project. The project area covers some 149 acres, consisting of 263 improved lots, 119 of which contain dilapidated structures requiring acquisition, clearance, and redevelopment; 41 of which contain substandard structures requiring rehabilitation treatment; and 103 of which contain standard structures requiring no rehabilitation. These various lot characteristics are indiscriminately scattered throughout the project area. The urban renewal plan also provides certain complementary "environmental" project area improvements, including streets, sewers, street lighting, and landscaping—supporting facilities (outside the project area) including a park, school, improved streets, and highway lighting.

power to promulgate and enforce local codes[42] to secure rehabilitation and compatible uses of private property.

Of these three essential state powers, the police power, embodying the enactment or improvement and the sound administration and effective enforcement of adequate local codes, is crucial to the successful long-term accomplishment of planned rehabilitation. In the meantime, inadequate minimum codes or ineffective enforcement procedures create problems for the accomplishment of successful rehabilitation in urban renewal areas. Where minimum code requirements are adequate, but the enforcement machinery and resources are ineffective, enforcement on a selective basis (project area) may be adopted.[43] Sometimes when problems result from inadequate code standards, so-called "project standards," which are higher than minimum code standards, are prescribed in the urban renewal plan.[44] Compliance with these higher standards will, for the most part, depend upon inducements and voluntary actions. When authorized by statute and when necessity for the action is properly demonstrated, offending structures may be acquired by the exercise of the power of eminent domain.[45] Municipal repair with resulting liens[46] and injunctive

[42] For this discussion, the term "local codes" refers collectively to state statutes and local ordinances, codes, and regulations affecting land use, construction, maintenance, and occupancy of structures and comprehends zoning and subdivision control regulations, building, plumbing, electrical, and heating codes, fire, health and sanitary regulations, housing, and other occupancy codes.

[43] Area enforcement is sometimes favored in order to achieve maximum utilization of available personnel. One study has concluded that area enforcement permits coordination between departments of the city government and that there is little or no waste of time travelling by inspectors from job to job when the inspection phase of enforcement is performed on an area basis. CITY OF LOS ANGELES, CALIFORNIA DEP'T OF BUILDING AND SAFETY, CONSERVATION—A NEW CONCEPT IN BUILDING LAW ENFORCEMENT 44-46 (1958); 1 N.Y. STATE DIVISION OF HOUSING, HOUSING CODES, THE KEY TO HOUSING CONSERVATION, CODE ENFORCEMENT PROBLEMS AND RECOMMENDATIONS 40 (1958). The latter study urged that code enforcement be undertaken on an area-by-area basis so that enforcement efforts would not be spread too thin, citing several examples of municipalities that attempted to do too much in too short a period of time by enforcing their codes on a city-wide basis, and concluded that few municipalities have the manpower to enforce a housing code in every necessary area and that area enforcement is practical because in most municipalities, sections of bad housing are relatively concentrated. 3 N.Y. STATE DIVISION OF HOUSING, HOUSING CODES, THE KEY TO HOUSING CONSERVATION, ADMINISTRATIVE GUIDE FOR LOCAL PROGRAMS 1 (1958). See also Gutknecht v. City of Chicago, 3 Ill.2d 539, 121 N.E.2d 791 (1954); and Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955), where the Supreme Court of the United States said: "[R]eform may take one step at a time. . . ."

[44] The troublesome problem of varying housing standards throughout the city in relation to the degree of blight in differing neighborhoods is neither new nor peculiar to the urban renewal program. The 1947 proposal of E. R. Krumbiegel, M.D., Milwaukee Commissioner of Health, and long-time authority on housing standards, advocates a solution to this problem by classification of areas within a city on the basis of housing quality. His proposal (sometimes referred to as "Zoned Housing Code") contemplates three basic area classifications, (1) areas for demolition, (2) areas for rehabilitation, and (3) areas for protection, with progressively higher housing standards.

[45] Generally, state enabling urban renewal legislation broadly authorizes the exercise of the power of eminent domain in aid of urban renewal project activities. One state statute expressly confers eminent domain powers upon failure or refusal of owners of substandard structures to rehabilitate in accordance with the approved urban renewal plan. CAL. HEALTH & SAFETY CODE § 33275 (Supp. 1959); see also *id.* §§ 33267, 33701, 33702, 33708, 33745.

[46] Statutes and ordinances that authorize the imposition of municipal liens for the cost of repairs and improvements to private property have been sustained by the courts where such liens do not purport to take precedence over valid subsisting encumbrances. See Central Sav. Bank v. New York, 279 N.Y. 266, 18 N.E.2d 151 (1938), *opinion amended*, 280 N.Y. 9, 19 N.E.2d 659, *cert. denied*, 306 U.S. 661 (1939).

proceedings, including receivership,[47] may also hold promise of becoming effective tools in compulsory rehabilitation.

Without question, the failure to enact, improve, soundly administer, and effectively enforce adequate local codes, more than any other single cause, accounts for the huge tasks of the present urban renewal effort. Urban blight and the festering of slums were nurtured in this failure. The broad concepts of urban renewal, their evolution and objectives, and the attending costs forcefully attest the serious consequences of the neglect and default in this most important area of public action. In the past the emphasis has been on ways and means to deal with the *consequences of code failures*—not enough has been done to strike at *code failure*. This is not to deny the very substantial contributions of many responsible groups and code officials. Rather, it is to say that code failure has gone too long as the skeleton in our municipal closets.

To deal with the ultimate consequences of code failure, the first real and direct efforts were slum clearance and redevelopment necessitating huge expenditures for land acquisition, demolition, and the write-down losses in returning the land to proper uses. Through this experience there has now evolved the concept of planned rehabilitation as the heart of the urban renewal process. But both slum clearance and redevelopment and planned rehabilitation operate only in specific project areas, which must qualify as either slum or blighted areas or areas deteriorated or in the process of deterioration. Thus, while specific project areas are given concentrated urban renewal treatment, as a much too prevailing rule, the rest of the community is neglected and continues to develop more and more qualifying areas of slum and blight to be salvaged only by costly, and often harsh, urban renewal project actions.

These observations are by no means fresh impressions or new discoveries; they inhere in the basic urban renewal concept. The Workable Program requirement in the Housing Act of 1954 and the earlier policy of encouraging code improvement and modernization in the Housing Act of 1949 significantly recognized the serious implications of code failures.[48] The Workable Program has become a most important instrument and stimulant for code enactment and improvement. *But, to do*

See also Jackson v. Bell, 143 Tenn. 452, 226 S.W. 207 (1920); CHARLES S. RHYNE, MUNICIPAL LAW, § 26-25 (1957), for other cases dealing with the question of compulsory repair or demolition of substandard buildings.

[47] For instance, in Illinois municipalities are authorized to apply for a court order to repair, demolish, or bring a structure up to minimum code standards contained in ordinances or a community conservation plan. ILL. REV. STAT. ch. 24, § 23-70.3 (1959). A determination of the validity of § 23-70.2, which imposes a repair lien that does not take priority over existing encumbrances, was expressly avoided in People *ex rel.* Gutknecht v. Chicago, 3 Ill.2d 539, 21 N.E.2d 791, 798 (1954). To secure compliance with § 23-70.3, the City of Chicago in 1959 sought and obtained in the Superior Court of Cook County the appointment of a receiver to take control of certain privately-owned properties and make necessary repairs and improvements from funds borrowed by receiver's certificates which become first liens upon the properties. Appeal was initiated to the Supreme Court of Illinois, but was dismissed in 1960 because defendant failed to perfect the appeal. City of Chicago v. Hansberry (No. 35675, January Term, 1960).

[48] See article by Rhyne, *The Workable Program—A Challenge for Community Improvement*, elsewhere in this symposium, which discusses this entire area.

the entire job, new ways and means must be developed to assure a practical and sustained process of planned rehabilitation on a community-wide basis. If we are ever to work our way out of urban renewal project operations and the attending huge public costs, we must think and act in terms of planned rehabilitation on a community-wide basis—at the heart of which must be adequate local codes, soundly administered, and effectively enforced. In this direction, note should be taken of the recent testimony of Federal Housing Commissioner Zimmerman and Urban Renewal Commissioner Walker regarding the availability of FHA section 220 insurance for general community-wide rehabilitation. It was there pointed out that, while such insurance may be made available only in urban renewal project areas under approved urban renewal plans, it is not necessary that urban renewal loan or grant assistance support the project. Instead, project activities need consist of only three basic elements: (1) a comprehensive program of code enforcement; (2) a comprehensive program to obtain voluntary compliance with rehabilitation standards that are acceptable to FHA for mortgage insurance purposes; and (3) a commitment from the locality to eliminate any environmental conditions that are blighting the area or causing deterioration.[49]

The potential of planned rehabilitation is measurable primarily in terms of successful local codes. But, upon taking stock, this all-important tool is too often found lacking, out-moded, or ineffective. Housing Administrator Mason, at the National Association of Housing and Redevelopment Officials Conference in Washington on February 3-4, 1959, stated:

> The neglect of many municipal governments to enforce (as well as to modernize) housing, building, health, and zoning codes and ordinances is close to a national disgrace. If continued, it can nullify a well-rounded urban renewal campaign. It can make it dangerously lopsided. Unless these codes are enforced to the hilt, we are in danger of firing our urban renewal dollars into renewal areas to no effective purpose.

The greatest lack is probably in housing occupancy codes, as distinguished from building or construction codes. According to the 1960 *Municipal Year Book*, 229 cities of over 10,000 population reported some form of housing code. On this basis, for the nearly 1400 cities having over 10,000 population, only one out of every six cities has enacted a housing code.[50]

A. The Influence of Economic Considerations

The levels of code standards, and their enforcement, are importantly determined by economics. Aside from the dramatic examples of violence to basic health and safety requirements (such as the contaminated well or structurally dangerous founda-

[49] See testimony of Housing Administrator Norman P. Mason and Federal Housing and Urban Renewal Commissioner in *Hearings Before a Subcommittee of the Senate Committee on Banking and Currency on Housing Legislation of 1960*, 86th Cong., 2d Sess. 951-59 (1960). See also URA procedures for "non-assisted" urban renewal projects, URBAN RENEWAL MANUAL bk. II, pt. 45, *Policies and Requirements for Local Public Agencies*.

[50] The urgent need for modernization of building codes has been characterized as "$1 billion-a-year cost of code-enforced waste." House and Home, July 1958, p. 112.

tion or wall) affecting the relatively few, it is the ability to pay for housing that ultimately places a ceiling on the quality and enforcement of local codes. Effective enforcement of codes embodying raised standards presupposes, wherever a truly substantial segment of the population is affected: (1) that the people can afford the higher standards (although at some points this raises problems of subsidies such as welfare payments, public housing, relocation housing, or special aids and inducements for rehabilitation); and (2) that there is available the industrial capacity organized effectively to supply the needed services, materials, and equipment. These factors are apparent in the several programs of federal aid for housing, planning, and urban renewal; they are reflected in the increasing concern to find better ways and means to secure and enforce higher code standards in keeping with the higher levels of living standards and industrial production.

Code enforcement has always posed the difficult problem of balancing so-called "vested rights" or property rights with the demands of public health, safety, and welfare. If enforcement creates substantial hardships, either the level of standards is in jeopardy or the enforcement breaks down and becomes ineffective. Some brief references to the past will help better to bring into focus the dilemma of balancing objectives with economic considerations. The Urbanism Committee of the National Resources Committee in the report of June 1937 recommended that:[51]

> Municipal authorities should modernize and aggressively enforce to the limit of their powers their building and sanitary codes and zoning ordinances; they should initiate the widest program of demolition possible thereunder; and, where existing building and sanitary codes and ordinances dealing with the demolition of unfit buildings are inadequate, these should be made more stringent in order to enable the community to rid itself of such structures. Where necessary, State laws authorizing such codes and ordinances should be enacted.

In the same report, the Committee recommended that:[52]

> Local-urban governments should consider the adoption of a single standard for buildings, old and new, and the progressive, wholesale condemnation under the police power, *after a reasonable period of grace,* of all buildings that either for structural or sanitary reasons, or for reasons of inadequacy of light and air, do not measure up to an acceptable standard of use and occupancy.

More directly addressed to the notion of deferred demolition were the 1942 study and recommendations of the Subcommittee on Housing Regulation, of the Committee on the Hygiene of Housing, Committee on Research and Standards of the American Public Health Association, which stated, in part:[53]

> The development of official local housing standards coupled with sound inspection and appraisal techniques should warrant the drafting and testing in court of more effective

[51] NATIONAL RESOURCES COMMITTEE, OUR CITIES—THEIR ROLE IN THE NATIONAL ECONOMY 75-76 (1937).

[52] *Ibid.* (Emphasis added.)

[53] *The Improvement of Local Housing Regulation Under the Law,* 32 AM. J. PUB. HEALTH 1263, 1275 (1942). (Emphasis added.)

regulations to deal with buildings and areas below a certain standard. For example, the courts might now sustain a law which would provide that seriously substandard dwellings shall be taken out of use *after a limited period allowed for amortization of any remaining economic value of the structures.* Local authorities might be authorized within certain limits to forbid rent collection after an appropriate deadline.

These early committees, pioneering in the concepts of *a reasonable period of grace* and *a limited period allowed for amortization of any remaining economic values of the structures,* were undoubtedly influenced in no small measure by prevailing economic conditions. Bold as these proposals may have appeared to some, it is significant and understandable that both Committees emphasized demolition of unfit and seriously substandard structures; they were seeking in these concepts to balance the needs with the limitations of the times. Even though the police power had theretofore been exercised and sustained to compel improvements and alterations to existing structures,[54] the Committees' recommendations were directed to structures requiring demolition. Through these concepts they were seeking practical means to achieve enforceable higher code standards, geared to the ability to pay and to the existing housing supply and availability of the necessary resources.

B. Amortization of Nonconforming Uses: A Useful Precedent

Except when acquisition is necessary under an urban renewal project plan or for other public uses, it should now fairly be conceded that nonsalvable structures should be demolished under the police power with little or no period of grace or so-called amortization. However, allowing the owner of a salvable substandard structure a reasonable period for compliance with local code standards would not differ in basic principle from the amortization of nonconforming uses concept as applied in the zoning process. This principle is not only equally sound, but applies with greater force to salvable structures in violation of local codes and may offer a means for more effective enforcement of higher code standards.

Shortly following the landmark case of *Euclid v. Ambler Realty Co.*[55] (which dealt only with prospective uses), the Louisiana courts sustained local legislation requiring elimination of a nonconforming grocery store and drug store after a one year amortization period.[56] Due to the relatively limited use of compulsory termination provisions in zoning ordinances, courts have, until recently, had few occasions to pass upon their legality.[57] However, although court cases are not numerous, there is sufficient support to consider this means an appropriate adjunct of land use control.

[54] Commonwealth v. Roberts, 155 Mass. 281, 29 N.E. 522 (1892); Health Department v. Rector, Trinity Church, 145 N.Y. 32, 39 N.E. 833 (1895); Adler v. Deegan, 251 N.Y. 467, 167 N.E. 705 (1929); Adamec v. Post, 273 N.Y. 250, 7 N.E.2d 120 (1937). The principle is now firmly established. See Petrushansky v. State of Maryland, 182 Md. 164, 32 A.2d 696 (1943); Givner v. Commissioner of Health, 207 Md. 184, 113 A.2d 899 (1955); Givner v. State of Maryland, 210 Md. 484, 124 A.2d 764 (1956); Paquette v. City of Fall River, 155 N.E.2d 775 (Mass. 1959); Queenside Hills Co. v. Saxl, 328 U.S. 80 (1946); Richards v. City of Columbia, 277 S.C. 538, 88 S.E.2d 683 (1955); Boden v. City of Milwaukee, 8 Wis.2d 318, 99 N.W.2d 156 (1959).

[55] 272 U.S. 365 (1926).

[56] State *ex rel.* Dema Realty Co. v. McDonald, 168 La. 172, 121 So. 613, *cert. denied,* 280 U.S. 556 (1929); State *ex rel.* Dema Realty Co. v. Jacoby, 168 La. 752, 123 So. 314 (1929).

[57] For a discussion of the decided cases on this subject see Annot., *Power to terminate lawful non-*

In the last ten years the courts have reviewed several significant zoning cases involving the amortization principle. In *Standard Oil Co. v. City of Tallahassee*,[58] the court sustained the validity of a provision of the local zoning ordinance requiring the discontinuance of certain nonconforming uses (including a gasoline filling station owned by plaintiff) after ten years. The court held that the enforcement of the ordinance did not entail any unjust discrimination or deprive the owner of due process. Two California decisions would seem to indicate the direction of judicial thinking. One of these cases, *Livingston Rock & Gravel Co. v. County of Los Angeles*,[59] upheld the validity of a provision in the Los Angeles county zoning ordinance requiring the termination of nonconforming uses after a period of years. The other case, *City of Los Angeles v. Gage*,[60] upheld a similar provision in the zoning ordinance of the City of Los Angeles. There seems to be an increasing acceptance of the idea that nonconforming uses can be gradually eliminated entirely by some sort of amortization program.[61]

Cases sustaining the amortization principle in zoning emphasize that the use of property is subject to the police power and the exercise of that power in the public interest frequently impairs property rights. They hold, in effect, that a reasonable amortization period provides an equitable means of reconciliation of the conflicting interests between the property owner and the public need and satisfies the requirements of due process.

Some few courts have refused to distinguish between immediate cessation and cessation after a tolerance or amortization period, or refused to end the nonconforming use within the prescribed period as being unreasonable. An Ohio case, *City of Akron v. Chapman*,[62] involved the validity of a section in a zoning ordinance requiring the removal of a nonconforming use when the city council decided that such use had continued for a reasonable time. Subsequently the city council passed an ordinance determining that defendant's nonconforming use (a junk yard) had existed for a reasonable time and should be discontinued after one year. The Supreme Court of Ohio, in declaring the ordinance invalid as an unreasonable exercise of the police power, held that the owner was deprived of his right to the continued use of his property and to due process of law.[63] As a means of recon-

conforming use existing when zoning ordinance was passed, after use has been permitted to continue, 42 A.L.R.2d 1146 (1953).

[58] 87 F. Supp. 145 (N.D. Fla. 1949), *aff'd*, 183 F.2d 410 (5th Cir. 1950), *cert. denied*, 340 U.S. 892 (1950).

[59] 43 Cal.2d 121, 272 P.2d 4 (1954).

[60] 127 Cal. App. 442, 274 P.2d 34 (1954).

[61] The Maryland Court of Appeals, in Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 129 A.2d 363 (1957), held that neither the federal nor the Maryland Constitution invalidated a municipal zoning ordinance requiring the removal of a billboard, constituting a valid nonconforming use, within five years. In 1957, the Supreme Court of Kansas upheld the elimination after two years of an auto wrecking yard that had been a nonconforming use. Spurgeon v. Bd. of Commissioners of Shawnee County, 181 Kan. 1008, 317 P.2d 798 (1957). The Court of Appeals of New York, in a 4-3 decision, in Harbison v. City of Buffalo, 4 N.Y.2d 553, 176 N.Y.S.2d 598 (1958), upheld the validity of a zoning ordinance which required the elimination of a pre-existing nonconforming use within three years.

[62] 160 Ohio St. 382, 116 N.E.2d 697 (1953).

ciling the cases that seem to reject the amortization theory, it may be suggested that the same result might have been achieved in these cases by characterizing the adjustment period as unreasonable under the circumstances. In the *Chapman* case, the court no doubt felt that the zoning ordinance was arbitrarily invoked in an attempt to outlaw a twenty-nine-year-old junk yard in one year.[64] A question that is likely to plague the courts for some time is how much time must the terminating provision allow the nonconforming use. The amortization principle employed in zoning is not only equally sound for the enforcement of housing and building code violations, but applies with greater force and reason when administered on a structure-by-structure basis and the amortization period and action required properly are determined in relation to the physical condition of specific offending structures.[65]

Enforcement of local codes through the amortization concept would also result in other benefits. Through such enforcement there could be developed an effective community-wide structure-by-structure inventory in relation to local code compliance. Such an inventory would be useful in public land acquisitions through eminent domain in establishing valuations in relation to unlawful uses or conditions of structures.[66]

VI

REHABILITATION: A CHALLENGE TO PRIVATE ENTERPRISE

By all odds, private enterprise—collectively, the materials producers, manufacturers, distributors, the crafts and services, the bankers, and by no means the least important, that unique entrepreneur, the American home-owner—holds the biggest stake in the fight to renew our urban communities.

In one way or another, private enterprise foots the tax bill, which increasingly

[64] Of quite the same import is Town of Somers v. Carmarco, 308 N.Y. 537, 127 N.E.2d 327 (1955), where the court held unconstitutional a zoning ordinance which would have required the cessation of a sand and gravel business on one year's notice. In the *Harbison* case, *supra* note 61, decided in 1958, the New York Court of Appeals distinguished its earlier decision in the *Camarco* case on the ground that "the period of termination was unreasonably short." 4 N.Y.2d at 562, 176 N.Y.S.2d at 604. Also somewhat akin is City of Corpus Christi v. Allen, 254 S.W.2d 759 (Tex. 1953), in which the application of an amortization provision to a particular automobile wrecking yard in a light industrial district was held improper.

[65] See Comment, 67 HARV. L. REV. 1203 (1954), criticizing decision in *Chapman* case.

[66] This distinction was stressed by Judge Van Voorhis in a strong dissenting opinion in Harbison v. City of Buffalo, *supra* note 61. He said: "This theory [amortization] to justify extinguishing nonconforming uses means less the more one thinks about it. It offers little more promise of ultimate success than the other theories which have been tried and abandoned. In the first place, the periods of time vary so widely in the cases which have been cited from different States where it has been tried, *and have so little relation to the useful lives of the structures,* that this theory cannot be used to reconcile these discordant decisions. Moreover, the term 'amortization', as thus employed, has not the same meaning which it carries in law or accounting. It is not even used by analogy. It is just a catch phrase, and the reasoning is reduced to argument by metaphor. Not only has no effort been made in the reported cases where this theory has been applied to determine what is the useful life of the structure, but almost all were decided under ordinances or statutes which prescribe the same time limit for many different kinds of improvements. This demonstrates that it is not attempted to measure the life of the particular building or type of building, and that the word 'amortization' is used as an empty shibboleth." 4 N.Y.2d at 574, 176 N.Y.S.2d at 614. (Emphasis added.)

[66] Guandolo, *Housing Codes in Urban Renewal,* 25 GEO. WASH. L. REV. 1, 47 (1956). See also, HHFA, OFFICE OF THE ADMINISTRATOR, DIVISION OF LAW, ADMISSIBILITY OF EVIDENCE OF ILLEGAL USE OR CONDITION OF PROPERTY IN EMINENT DOMAIN PROCEEDINGS (1951).

tolls the high costs of urban blight and neglect. At the municipal level, slum areas contribute about six per cent of the community's tax revenue, but require about forty-five per cent of the city's total expenditures for municipal services.[67] Federal expenditures and commitments for urban renewal aid are on the books in the hundreds of millions of dollars and increasing daily—and there must also be reckoned the millions of dollars of project expenditures provided by the localities themselves in carrying out their urban renewal undertakings.[68]

It is the responsibility of private enterprise to find practical and profitable ways to accomplish the rehabilitation task—it must do the job or rehabilitation will become an additional function of government.

A. Rehabilitation: A Big Business

Rehabilitation is big business by any standard of measurement. Aside from the tax load, as previously mentioned, over $11 billion were spent in 1959 for non-farm home improvements, additions and alterations, maintenance, and repairs.[69] Surveys have indicated that the rehabilitation business can generate $15 billion worth of gross sales each year.[70]

E. Everett Ashley III, Director, Statistical Reports and Development Branch, Housing and Home Finance Agency, in discussing the home rehabilitation market before the 1960 Annual Convention and Exposition of the National Association of Home Builders in Chicago, said:

> You need not conclude either just because you come from a new, fast growing area that there is no opportunity for remodeling. A look at Census figures shows that even in the rapidly expanding areas in the West almost four out of every ten dwellings are 30 years of age or older. The ratio is slightly greater in the South. Here in the Midwest the proportion is better than six out of ten and a similar ratio prevails back East. Taking the country as a whole, some 30 million of our 55 million dwellings are at least 30 years old. This is the size of the target you are shooting at!

The enormous rehabilitation job confronting industry and government is first and foremost a challenge to private enterprise. Urban Renewal Commissioner Walker expressed the challenge along these lines:[71]

> American industry has made a great contribution to the progress and aggressive development of the housing of this country to a standard which is second to none in the world. Without the cooperation and technical skill of industrial experience the Federal Government could not have so successfully increased the new housing inventory since World War II. Now the time has come for new forward strides to be taken in our housing program—the emphasis must shift from clearance and redevelopment to conservation and rehabilitation of existing housing if the job of urban renewal is to be effected across the

[67] URBAN RENEWAL DIVISION, SEARS, ROEBUCK & CO., ABC's OF URBAN RENEWAL 7 (1957).

[68] But not all government-aid programs are at the expense of the taxpayer—FHA Title I Housing Renovation and Modernization Program and FHA Sections 220 and 221 rehabilitation and relocation programs are self-sustaining, as are all other FHA programs.

[69] See appendix to this article.

[70] The *Modernized Model Home Manual* (n.d.), issued by the Marketing Department of Life magazine. See also House and Home, July 1960.

[71] Letter, Urban Renewal Commissioner Walker to H. N. Osgood, Aug. 23, 1960.

nation. It is essential that industry and banking use their great skills and technical experience in an all out joint effort with the Federal Government to find the answers to the problems surrounding the successful development of conservation. . . . We must create an industry, if you will, where investors can make a dollar and where lenders can feel a sense of security and get an adequate return on their money; the cost must be kept at a point where the people making improvements will be able to amortize and liquidate the cost in a reasonable time limit.

Unfortunately, the proven feasibility of planned rehabilitation on a large-scale basis has yet to be demonstrated successfully in any city of the United States. In the recent Senate Committee Report on the Housing Act of 1960, for instance, it is stated that part of the problem of expediting rehabilitation in urban renewal areas, particularly rehabilitation of structures for low- and moderate-income families, is a lack of proven examples of rehabilitated buildings to show property owners that improvements can be made at a cost which is not prohibitive.[72]

In his preface to *Residential Rehabilitation: Private Profits and Public Purposes,* Miles L. Colean stated that the number of examples of rehabilitation in America was small.[73] The demonstration grant program under which federal grants are available to localities to demonstrate phases of urban renewal offers possibilities of developing new rehabilitation techniques.[74] Under this program, out of thirty-three projects approved, eleven relate to rehabilitation. Of the eleven relating to rehabilitation, two—one in Baltimore and one in New York City—involve actual rehabilitation as against theoretical studies or analyses. The demonstration grant program in Baltimore is not yet completed, and the one in New York City was just recently approved.

Successful experience in large-scale rehabilitation is wanting because private enterprise has not found (or, if you will, has not sought out) the inducements to employ its great collective potential in this field.

There are so many different segments of industry contributing to the total complex of rehabilitation—with each, more or less, self-relegated to its separate place—the manufacturer, distributor, banker, the crafts and services—that few have seen a sufficiently compelling inducement to create out of their own limited interests the organization and capacity to sell and service the rehabilitation potential.[75] But there are encouraging signs upon the horizon, and in typical American tradition private enterprise will, sooner or later, effectively meet the increasing needs of the rehabilitation task.

[72] Senate Comm. on Banking and Currency, *Housing Act of 1960, Report,* S. REP. No. 1575, 86th Cong., 2d Sess. 20 (1960).

[73] MILES L. COLEAN, RESIDENTIAL REHABILITATION: PRIVATE PROFITS AND PUBLIC PURPOSES (1959).

[74] Section 314 of the Housing Act of 1954, 68 Stat. 629, 42 U.S.C. § 1452a (1958), authorizes the Housing and Home Finance Administrator to make grants to public bodies to assist in developing, testing, and reporting methods and techniques for the prevention and elimination of slums and urban blight.

[75] In his testimony before the District Committee of the House of Representatives during consideration of H.R. 12761 (which became Pub. L. No. 86-715, 74 Stat. 815-16, 86th Cong., Sept. 6, 1960), Mr. John H. Haas, Executive Secretary of the Metropolitan Association of General Improvement Contractors, described the diversity in the Washington, D.C. area as follows: ". . . the picture of this industry is far more complex, complicated and, often, even confusing than most people expect. It covers an infinite variety of people and of goods and services, from the man who fastens a roof shingle or a bathroom tile to the company which pulls condemned houses out of trouble or builds an addition to an existing dwelling. There are

B. An Industry Aborning

The Housing Agency noted in its *Housing Accomplishments of 1959* that increasing efforts were being made to devise ways and means of bringing industry into the rehabilitation field on a big scale. Encouragingly, Urban Renewal Commissioner Walker recently reported at a congressional hearing:[76]

> I am very happy that we are now seeing the beginning, or birth if you will, of an industry for conservation, which has not previously existed.

There are some noteworthy examples of organized rehabilitation on a scale large enough to demonstrate feasibility and reasonable profit. One such example is Peter Turchon of Boston, who has built up a successful business by buying, rehabilitating, and selling about 500 houses per year. He has been rehabilitating property since 1925. Another example is Richeimer Modernizing Systems, Inc., of New York City, which has devised a business franchise system to foster and encourage rehabilitation as a business—franchise participants obtain the benefits incident to acting as a national organization in dealing with building suppliers and manufacturers, in setting up showrooms and models, and in promotional advertising. Still another example is John F. Havens of Columbus, Ohio, who has made a successful business of buying houses for rehabilitation and resale.[77]

There are undoubtedly many examples of efficient, although small-scale, rehabilitation businesses throughout the country. Unfortunately, there are some home-improvement contractors—of the fly-by-night variety—whose unscrupulous methods victimized so many home-owners that stricter regulations have become necessary to protect the public. This was the situation in Washington, D. C., in the late summer of 1960 when the Congress, in the post-conventions session, completed enactment of Public Law 86-715,[78] which, along with stricter regulations, contains bonding requirements. In reporting the bill (which was strongly recommended by the Board of Commissioners of the District of Columbia), the House Committee of the District of Columbia related:[79]

> Recently, articles in the Washington Post and the Evening and Sunday Star newspapers have brought to the attention of the committee a growing pattern of complaints from homeowners in the District of Columbia who have been victimized by unscrupulous home improvement contractors.

27 definite skills and trade groups listed in the Yellow Pages, each one of which is primarily in the home improvement business, listing well over 5,000 names (but containing a great deal of duplication); when reduced to essentials—which is to say, tradesmen, contractors, and specialty dealers dealing in one or several phases of maintaining or increasing the livability or utility of a home—we find close to 1,000 such listings, doing an estimated volume of $300,000,000 per year in the Metropolitan area." (Hearings, not printed.)

[76] *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency*, 86th Cong., 2d Sess. 956 (1960).

[77] See URBAN RENEWAL ADMINISTRATION, MAKING REHABILITATION PAY—ONE MAN'S EXPERIENCE (1960).

[78] An Act Authorizing the Bonding of Persons Engaging in the Home Improvement Business and for Other Purposes, Pub. L. No. 86-715, 74 Stat. 815-16, 86th Cong., Sept. 6, 1960.

[79] House Comm. on the District of Columbia, *Authorizing the Bonding of Persons Engaging in the Home Improvement Business*, H.R. REP. No. 2145, 86th Cong., 2d Sess. 1, 2 (1960).

In the past 5 years such complaints made to the Better Business Bureau of Washington, D. C., have risen in rank among all complaints received by that bureau from sixth to third place, and in the past year such complaints have increased by approximately 40 percent. Since all instances of fraud and abuse are not reported, it is apparent that there is a need for corrective legislation.

The complaints most frequently received stem from the following practices: contractors receiving full payment prior to completion of the job; misrepresentation of the starting and completion dates and of costs; sloppy, inferior work; incomplete work; substituted materials; various other breaches of contract; and, improper permits or no permits at all.

Only fly-by-night operators can profit by such practices. The established ethical home improvement contractor cannot since his greater financial responsibility furnishes an assurance that a homeowner can obtain redress for violation of a home improvement contract. Requiring home improvement contractors to furnish a bond for the protection of the public will insure that such contractors will be financially responsible.

Viewed philosophically, the District of Columbia experience, and similar experiences elsewhere, may be regarded as some of the labor pains in the birth process of a new industry. More importantly, however, it points up some extremely significant problems which the new industry must fully understand and provide against.

C. Some Government and Public Responses to the Problem

Government aid for rehabilitation has been available on the federal level for twenty-five years through the FHA Title I program, under which about $13 billion of property improvement loans had been insured through June 30, 1960. More recently, in 1954, sections 220[80] and 221[81] were added to the National Housing Act, which established the FHA in 1934. Section 220 authorizes FHA to issue mortgage insurance on liberal terms to assist in the construction or rehabilitation of dwellings in urban renewal project areas. Under section 221, FHA assists in the financing of new or rehabilitated dwellings (not required to be located in urban renewal areas) for families displaced by governmental action, such as slum clearance or code enforcement or acquisition of land for public improvements.

On the state level, a good example of government aid is the New York law authorizing cities until June 1, 1961, to adopt ordinances providing that any increase in assessed valuation resulting from alterations and improvements to certain existing multiple dwellings to eliminate unhealthy or dangerous conditions or to replace inadequate and obsolete sanitary facilities will be exempt from local real property taxes for a period of up to twelve years. The statute further provides that a locality may abate taxes on such property by an amount equal to 8⅓ per cent of the cost of rehabilitating the structure each year for a period of ten years.[82]

On the municipal level, New Orleans provides a good example with the experi-

[80] 68 Stat. 596 (1954), 12 U.S.C. § 1715k (1958).
[81] 68 Stat. 599 (1954), 12 U.S.C. § 1715*l* (1958).
[82] N.Y. REAL PROP. LAW § 489.

ence it had with its Home Improvement and Slum Prevention Division. In 1954, $400,000 was appropriated to operate the Division. The city estimated that during that year the enforcement program generated more than $10 million worth of rehabilitation business.

In California, the Oakland Urban Renewal Foundation was formed as a nonprofit organization by a number of individuals and organizations to provide advisory services and assistance to property-owners in connection with the urban renewal program undertaken by the local public agency. Also, through donated funds the Foundation proposes to assist in financing rehabilitation in hardship cases.

In Ohio, the Cleveland Development Foundation was organized on a charitable basis to aid civic and governmental agencies to get under way a practical urban renewal program. A revolving fund of $2 million was provided through subscription by civic-minded persons and business leaders. The Foundation assists in financing rehabilitation costs in hardship cases.

D. Industry Response to the Problem

Industry and other private groups have combined to form American Council to Improve Our Neighborhoods (ACTION), which represents all segments of national life, including commerce, finance, manufacturing, labor, religion, and the professions, with a view to helping provide in our nation's cities the best possible environment in which to live and earn a livelihood, with particular emphasis on good housing, efficient transportation, vigorous centers of commerce and culture, and adequate financing for private and public improvements. To achieve these objectives, ACTION provides a national research and information program, liaison with business, industry, government and the professions, and furnishes services to local citizens' groups.

Further, individual segments of industry are doing a great deal in the rehabilitation field. Many firms representing the varied private enterprise components involved in rehabilitation have developed specific educational and sales programs designed to aid industry and the public in better understanding the problems of rehabilitation. One example is the United States Gypsum Company, which, in cooperation with the National Association of Home Builders, published a booklet entitled *Operative Remodeling* in 1956. Another is Sears, Roebuck, and Co., which has had an active urban renewal program for over five years, wherein hundreds of local Sears store managers and other executives, encouraged by top management, have provided leadership and stimulus for their city's program to eliminate and prevent slums. To better equip its personnel to take active part in local community programs, Sears has provided a number of educational tools, including a slide film entitled "The Dollars and Sense of Urban Renewal," a film entitled "As Your Home Goes," an illustrated newsletter entitled "Urban Renewal Observer," and two primer-type booklets entitled *ABC's of Urban Renewal* and *Citizens in Urban Renewal*. In addition, the Sears Foundation has established an endowment

of ten annual graduate fellowships in city planning and urban renewal in an effort to help alleviate the shortage of experienced personnel in this field.

E. An Assist to Home-owners

A necessary complement to an effective rehabilitation industry is, for the lack of a better term, a clearing-house at the municipal level to serve the property-owner as a single-stop center for necessary information and the manifold actions which are brought into play through local code requirements and urban renewal activities.

All too frequently the home-owner who voluntarily or in compliance with local codes undertakes to rehabilitate his property is confronted with a series of problems, the answers to which he must seek out from several sources. In addition to understanding code requirements and obtaining necessary permits, he requires information concerning urban renewal objectives, construction materials and methods, and financing aids available for getting the job done.

The urban property-owner confronted with rehabilitation problems is not unlike the farmer of many years ago. Before the farmer had the assistance of the county agent, he lacked anyone to advise him of existing but unknown sources of guidance towards improved methods of farming. A parallel to this rural situation exists in the problem confronting the home-owner faced with the job of restoring his dwelling to the established code standards. An urban agent or home improvement counselor could advise on financing, code requirements, architectural design of desired structural changes, reliable contractor availability, material and labor sources, costs, and the many related questions. The office of the urban agent or home improvement counselor could be an information center where under one roof most of the needed help would be available. The lending institutions, contractors, material suppliers, architects, lawyers, and others could be enlisted for voluntary part-time counseling to supply these essential services. Much literature from material suppliers, banks, and others, relating to home improvement is available and could be distributed at the center. A lending library of books on modernization, including do-it-yourself material, would help to supplement the personal guidance provided. Another service the center could offer would be evening clinics on methods of home improvement.[83]

[83] The Ford Foundation on August 8, 1960, announced that it had made a grant of $125,000 to the University of Illinois, similar to grants made to Rutgers University and the University of Wisconsin, designed to help develop urban counterparts of the agricultural research, education, and extension programs of the land-grant colleges. These grants may point the way to the needed evolvement of an urban agent or home improvement counselor. See Chicago Sun Times, Aug. 9, 1960, p. 5, col. 1.

APPENDIX

CONSTRUCTION INVOLVING REHABILITATION AND CONSERVATION OF EXISTING DWELLING UNITS

(Millions of dollars)

Year	EXPENDITURES FOR		Year	EXPENDITURES FOR	
	Additions and alterations of existing private nonfarm dwellings	Maintenance and repairs of existing private and public nonfarm dwellings		Additions and alterations of existing private nonfarm dwellings	Maintenance and repairs of existing private and public nonfarm dwellings
1915	$ 140	$ 506	1940	$ 335	$ 1,256
1916	145	521	1941	375	1,333
1917	125	551	1942	225	1,232
1918	110	565	1943	160	1,217
1919	130	595	1944	220	1,315
1920	175	625	1945	516	1,527
1921	185	670	1946	1,307	2,705
1922	200	714	1947	1,960	4,200
1923	210	759	1948	2,467	4,800
1924	230	833	1949	2,200	4,800
1925	250	908	1950	2,400	4,600
1926	270	982	1951	2,490	5,000
1927	290	1,056	1952	2,787	5,300
1928	315	1,131	1953	2,955	5,300
1929	340	1,222	1954	3,013	5,700
1930	305	1,111	1955	3,376	6,500
1931	175	959	1956	3,695	7,000
1932	105	752	1957	3,903	7,400
1933	145	728	1958	3,862	6,800
1934	200	837	1959	4,435	6,800 est.
1935	250	909			
1936	295	1,066			
1937	320	1,154			
1938	295	1,068			
1939	320	1,154			

Source: HOUSING AND HOME FINANCE AGENCY, THIRTEENTH ANN. REP. table A-23, at 306 (1960) (based upon U. S. Dep't of Commerce data).

THE DISPOSITION PROBLEM IN URBAN RENEWAL

LYMAN BROWNFIELD*

I

NEED FOR EQUILIBRIUM BETWEEN STARTS AND SALES

The culmination of an urban renewal project is the improvement of the project real estate. This is true whether the improvement be renovation of existing structures, the simple replacement of old structures or vacant land with new construction, or the basic redevelopment of an entire area, including streets, utilities, and public services. Immediately preceding in the chain of events is the sale of the property by the Local Public Agency (LPA).

Generally speaking, everything which has happened up until this point is of dubious public benefit unless it is followed by redevelopment. Filled-in low lands,[1] extinguished underground fires,[2] and the like, stand apart from the usual clearance project in which, up until the time property is sold to a private redeveloper, the net result has been to dislocate families and businesses, scatter church parishes and neighborhood groups, remove property from the tax rolls, and leave in the wake of these accomplishments gutted buildings and rubble-strewn lots. If urban renewal stopped here, it would have few proponents.[3]

With this background one might think that urban renewal would be regarded as an assembly line, the beginning being labeled "Preliminary Planning" and the end "Disposition." If automobiles were passing along such an assembly line, there would necessarily be a direct, absolute, and constant relationship between the speed with which material entered or traveled along any portion of the line and the speed at which the product came out at the end marked "Disposition." The urban renewal program is more elastic, but the degree of the relationship that must exist on a national level between disposition and the earlier phases of the urban renewal program, and the implications of this relationship, have to a surprising extent been overlooked and misunderstood.

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[1] Eastwick Project, Philadelphia, Pa., R-42.

[2] West Side Mine Fire, Carbondale, Pa., R-15.

[3] In speaking of the urban redevelopment projects in Minneapolis, Minn., R. Kenneth Peterson, Mayor of Minneapolis, stated, on July 29, 1959: "However, our emphasis in this program is upon the development portion. When the site acquisition and clearance have been completed, there still remains the problem of site disposition, to be followed by rebuilding. It is this stage of the urban renewal program which we are anticipating with excitement. Until we reach this stage, what we are accomplishing is destruction. What we destroy, we plan to replace with something much better, but I believe Minneapolis will be best served if we do not carry forward a program for tearing down part of our city faster than we can execute the companion program of rebuilding." *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency on the President's Message Disapproving S. 57*, 86th Cong., 1st Sess. 448 (1959).

One of the principal determinants of the speed of the program is the amount of money which Congress, the states, and the local political subdivisions can and will make available for it. A ten-year, $6 billion program has been pressed upon Congress as the minimum program which will serve the country's interests,[4] the figure being supported by answers to questionnaires mailed to municipal administrations throughout the country asking them how much money they could spend on urban renewal if they had it, and by estimates as to how much money the cities failing to answer the questionnaires would have said they needed if they had answered.[5]

It is inferrable from reading the questionnaire and from studying the information submitted to the Congress that to a considerable extent, this figure represents a direct translation of desired urban renewal projects into dollars. It does not seem to represent the results of a study of the capabilities of the cities to handle all of the aspects of the urban renewal projects that this money would support. An urban renewal program of this size would require additional planning, engineering, appraising, negotiating, title examination, litigation, relocation, and disposition. Presumably all those who compiled this report recognized the existence of these various necessary parts of urban renewal, but it appears that, as serious limiting factors on the speed of urban renewal, they were for the most part either ignored or the solution of the problems they presented taken for granted.

In recognition of the need for more trained personnel in the present program, let alone one double the present size, it has been suggested that the federal government subsidize the training of technical personnel.[6] Because of the need for relocation housing and for relocation assistance to businesses displaced by the renewal process, various federal subsidies and other assistance have been sought through proposed legislation affecting the operations of the Public Housing Administration (PHA),[7] the Urban Renewal Administration (URA),[8] the Federal Housing Administration (FHA)[9] and the Federal National Mortgage Association (FNMA)[10]—and which would cover public housing, middle-income housing,[11] cooperative housing, relocation housing, housing for the elderly, and housing that would probably

[4] S. 3509, 86th Cong., 2d Sess. (1960) (introduced by Senator Clark).

[5] *Summary of the Results of the 1960 Urban Renewal Survey Conducted by the American Municipal Association and the United States Conference of Mayors*, which was submitted by Richardson Dilworth, Mayor of Philadelphia, Pa., President of the United States Conference of Mayors, to the Subcommittee on Housing of the Senate Committee on Banking and Currency, May 17, 1960. See *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency* 86th Cong., 2d Sess. 386-88 (1960) [hereinafter cited as *1960 Senate Hearings*].

[6] S. 3509, 86th Cong., 2d Sess. (1960) (this suggestion also contained in a statement made by the American Institute of Planners to the National Housing Conference, May 18, 1960).

[7] S. 3509, 86th Cong., 2d Sess. (1960).

[8] S. 3042 (to increase relocation payments to $500 in the case of an individual or family and $5,000 in the case of a business); S. 3509; H.R. 12152; and H.R. 12603, all 86th Cong., 2d Sess. (1960).

[9] S. 3042, S. 3509, S. 3512, H.R. 12153, H.R. 12603, 86th Cong., 2d Sess. (1960).

[10] S. 3509, S. 3512, H.R. 12174, H.R. 12153, H.R. 12603, 86th Cong., 2d Sess. (1960).

[11] S. 1342, 86th Cong., 2d Sess. (1960) (introduced by Senator Javits).

fall in other categories.[12] Such assistance has been successful to a degree which is substantial but which in some respects has disappointed almost everyone[13] and in others has been considerably short of the objectives proposed by the more extreme advocates of the program.

Since the cities themselves might find it necessary or advisable to limit the extent of their contributions to the expense of the program, numerous efforts have been made to reduce either directly or by indirection the contribution of the localities to the cash requirements of urban renewal.[14]

There is nearly unanimous agreement on the importance of urban renewal as a basic effort to revitalize our cities; it is natural that this unanimity should diverge into numerous trains of thought as to who is responsible for it, just how big the program should ideally be, and the relative importance of this program and other demands upon our national resources. Those who would step up the rate of spending in the urban renewal program and take the risk that the other concomitant activities can be proportionately stepped-up to accommodate the increase, instead of vice versa, unquestionably are sincere in their belief that the urgent need for such a stepped-up program justifies these risks—to the extent that they concede there are such risks. For myself, I have a question, although not a firm opinion, as to whether the problems beginning with planning and ending with acquisition and clearance can be solved fast enough to accommodate a $600 million program. In some fields, such as planning, the ability to speed up the work to accommodate a much larger program is more elastic than the ability to maintain quality.[15] Difficult value judgments may be involved, and it may take years of experience to find out whether quality was sacrificed to accelerate the program, and, if it was, whether the sacrifice was worthwhile. On the other hand, with respect to relocation the program

[12] (a) Low-rent nonprofit private housing, provided for in H.R. 12152, 86th Cong., 2d Sess. (1960). (b) Small private rental housing units, provided for in H.R. 12153, H.R. 12603, 86th Cong., 2d Sess. (1960). (c) Nonprofit private rental housing units, provided for in H.R. 12603, 86th Cong., 2d Sess. (1960). (d) Regular rental housing, provided for in S. 3042, 86th Cong., 2d Sess. (1960). (e) Urban renewal housing of rental projects, provided for in S. 3042, and H.R. 12174, 86th Cong., 2d Sess. (1960).

[13] One purpose of Federal National Mortgage Association (FNMA) purchase of mortgages in its Special Assistance operation is to interest the private money market in new types of mortgage loans. The failure of private lenders to purchase section 220 urban renewal mortgages in any volume still leaves the major financing in this field to FNMA.

[14] "In its program resolution for 1960, NAHRO reaffirmed the need for an increase in the federal share of net project cost for renewal programs. We advocate changing the present two-thirds Federal, one-third local sharing formula to four-fifths Federal, one-fifth local." Statement of Charles L. Farris, President, National Association of Housing and Redevelopment Officials, May 12, 1960, in *1960 Senate Hearings* 256. "We also believe that the percentage of the Federal contribution should be increased. Our official position is that it should be 4 to 1, instead of 2 to 1. I personally think 3 to 1 would be a very fair figure. I mean, that is purely my personal position on it." Statement of Richardson Dilworth, Mayor of Philadelphia, Pa., President of the United States Conference of Mayors, May 17, 1960, in *1960 Senate Hearings* 392.

[15] "I would rather do our job well with what we have, provided we can plan ahead so it is a continuing program. . . . You did not pass a housing bill last year, but we got along. I do suggest, however, that you pass one this year, because we cannot get along next year without one, and the amount becomes, in my opinion, secondary to the quality of legislation." Statement of Kenneth Peterson, in *Hearings Before the Subcommittee on Housing of the Senate Committee on Banking and Currency on the President's Message Disapproving S. 57*, 86th Cong., 1st Sess. 453 (1959).

has a certain built-in safeguard against an unproductive speed-up, since it is necessary for the LPA to satisfy the Administrator that relocation can be handled before the project can proceed.[16]

It may be that all of the elements of the urban renewal program can be accelerated immediately, tremendously and successfully. If not, it is nevertheless probably true that chronic inadequacies in certain areas of the program would leave damage in their wake but would not prevent the expenditure of billions of dollars by federal, state and local governments for urban renewal. On the other hand, inadequacies in the progress of selling urban renewal project land bear a different relationship to the speed of the urban renewal program than do the other elements I have mentioned and are more apt to affect the program directly, instead of affecting only the results which the program leaves behind.

Failure to sell urban renewal land is obvious, it is obvious immediately, and it is obvious to everyone, not just to the individual having a specific interest in the project. The basic thesis of this article is that lagging disposition can bring disenchantment with urban renewal and ultimately destroy the program, and that there must be an approximate equilibrium between the amount of money poured into the assembly line at one end to initiate projects and the rate at which urban renewal land is sold and developed from the other end of the line.

Obviously, this is a judgment based upon intangibles. Informed people can differ as to the validity of my conclusions, and no one can prove indisputably who is right. It seems clear that such differences of opinion do exist. The American Municipal Association (AMA) and the United States Conference of Mayors (USCM) made an estimate of urban renewal needs without giving any consideration to disposition progress as a limiting factor.[17] Urban Renewal Commissioner David M. Walker, during two sessions of Congress, both before[18] and after[19] this AMA

[16] Sec. 105(c) of the Housing Act of 1949, as amended, 68 Stat. 625 (1954), 42 U.S.C. § 1455(c) (1958):

"(c) There be a feasible method for the temporary relocation of families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families displaced from the urban renewal area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and reasonably accessible to their places of employment."

[17] See Summary of the Results of the 1960 Urban Renewal Survey, conducted by the American Municipal Association and the U.S. Conference of Mayors, May 17, 1960, in *1960 Senate Hearings* 386.

[18] "We expect to be able to use all but a small part of the capital grant authority provided for the fiscal year ending June 30, 1960. The level of capital grant authority provided through fiscal 1961 should be adequate to sustain the ambitious and constructive program I have outlined." Statement of Commissioner David M. Walker, Feb. 17, 1960, in *1960 Senate Hearings* 89. Later on in his statement, Commissioner Walker said: "One of the things I hope to do in this program is to put it on a basis of ability to digest; and I suggest, Senator, that if we get it on this basis we will move a lot more rapidly toward this business of clearing our slums than we have in the past decade, with these millions of dollars dangling and in too many instances going unused." *Id.* at 97.

[19] "I am even more convinced today that we will have an adequate supply of urban renewal money through fiscal 1961 than I was in February. If you would like, I will go over this in detail with you, Senator, and show you exactly what we believe is happening in this business.

"I might point out to you that the concern I just expressed as part of the reason why I am not too much interested in a billon-dollar program in 1961 is because—I think you and I will quickly agree—

and USCM estimate, has made several public statements indicating that the good of the program requires it to proceed no faster than the projects themselves can be digested, and the last stage of the digestion process is certainly disposition and redevelopment. Commissioner Walker is almost unanimously commended by Republicans and Democrats[20] alike for his work as Urban Renewal Commissioner; yet neither AMA, USCM, nor the National Association of Housing and Redevelopment Officials (NAHRO) has given any indication of viewing disposition as the stage of the assembly line which actually should control the size of the urban renewal program.

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the relocation problem alone, and it is not the sole problem, would exclude from feasibility any billion-dollar program next year. But there are other reasons.

"However, I would like to get off the negative side and get on the positive side and talk to you a little bit about what moneys are available and what makes up the applications." Statement of Commissioner David M. Walker, May 9, 1960, *1960 Senate Hearings* 157.

And on May 27, 1960, Commissioner Walker made the following statement:

"Section 4(a) of S. 3509 would increase the urban renewal grant authorization by $600 million on the date of the enactment of the bill, which would be in addition to the $300 million already authorized to become available on July 1, 1960. This would mean that a total of $900 million in new capital grant authority would be made available between now and the end of fiscal 1961. As I have indicated in my previous appearances before this Committee, it is unnecessary to burden the Federal budget for this amount of authority at this time. We expect to use almost all of the authority that has been provided and made available for the current year, but the $300 million that will become available on July 1 will be sufficient, by all indications, to sustain a program geared to the maximum level of actual accomplishment through the coming fiscal year." *1960 Senate Hearings* 988.

[20] "Mr. Walker, I would like to congratulate you on what I think is a fine qualitative job of administration. I get reports from all over my State that you and your staff have been most cooperative, most helpful, that you have, as you say, been cutting red tape. The Urban Renewal Administration is one with which most of our communities are quite happy. I think a good part of that ought to be credited to my friend, David Walker." Statement of Senator Clark, Feb. 17, 1960, in *1960 Senate Hearings* 89.

"Thank you, Mr. Walker. If it wouldn't hurt, I would like to put into the record a word of commendation from a Democrat for what I think is a good job done since you have been in the agency. It is pleasing to me to see a fellow come into the agency and really get down to trying to help the local housing authorities and urban redevelopment authorities. I want to commend you for your new manual and for the work you have been doing along that line." Statement of the Honorable Albert Rains, May 17, 1960, in *Hearings Before the Subcommittee on Housing of the House Committee on Banking and Currency*, 86th Cong., 2d Sess. 91 (1960) [hereinafter cited as *1960 House Hearings*]. Congressman Rains continued: "Too, I like the brief, pointed statement that you have made . . . ." *Ibid.*

"Mr. Chairman, I would just like to add to what you said about Mr. Walker. He comes from the great city of Philadelphia and I don't think, even though he doesn't come from the section I represent, they could send anyone who has greater legislative or administrative experience. He has done a splendid job and I certainly say 'ditto' to your remarks about the statement he submitted here this morning." Statement by the Honorable William A. Barrett, May 17, 1960, in *1960 House Hearings* 91.

"First, I would like to talk about the urban renewal side. No one has greater respect for Dave Walker than I have. I think he is doing a splendid job, and I think that this is a compliment to Norman Mason in the selection of an individual such as that." Statement by Charles L. Farris, President, National Association of Housing and Redevelopment Officials, May 12, 1960, in *1960 Senate Hearings* 243-44.

"The Housing Act of 1959 was the salvation of that immediate crisis, and for this the city of East Orange and myself are thankful to Dave Walker, the Urban Renewal Commissioner. He cut through red tape that surrounded our application since it was filed in January of 1959.

"I would like to take this opportunity to publicly commend Mr. Walker on the excellent job he has done since becoming Commissioner. The lengthy and cumbersome administrative regulations have been revised and reduced. The required period for planning a project has been shortened and a more realistic independence of operation has been given to local public agencies. I hope he will continue his diligent efforts to simplify regulations and reduce administrative red tape." Statement of James W. Kelly, Jr., Mayor

This country has a tremendous amount of credit, commercial, industrial, and construction capacity. Rarely, except in time of war, is this capacity exhausted; yet it seems elementary that in a given space of time, the United States can absorb only so much urban renewal project land for redevelopment. Redevelopment involves, among other things, purchase of the land, arranging for the lease or resale of the improved property, the detailed architectural design of the improvements, the arrangement of financing, and the completion of construction, after which the tenants or purchasers move in.

Congress has made available through June 30, 1961, $2 billion of capital grant funds for urban renewal projects.[21] A projection of my own, based on experience through December 31, 1959, indicates that the amount of vacant real estate which will be available for sale as the result of this present authorization will exceed in value the $2 billion federal contribution. Since much of this urban real estate is located in high-density areas, the value of construction in relation to the value of the property is fairly high, so that the resulting values from the urban renewal projects for which capital funds have already been authorized may reasonably be expected to total $15 billion to $25 billion.[22] And, of course, nobody expects the program to stop here.

Of the $2 billion or more of real estate which existing authorizations will ultimately make available for sale, approximately $113 million had been sold as of June 30, 1960.[23] This still leaves approximately $2 billion of real estate coming up for sale. Of course, these sales will take place over a period of several years, but the pace has been accelerating. The program is now over ten years old. If most of the land which will be made available from the present authorization cannot be sold for redevelopment within the next ten years, I am convinced that the present urban renewal program will be on its way out and that our cities will either have given up or will have turned to other avenues of salvation. Such an outcome would be tragic, the more so because it would be unnecessary, and I do not believe it will happen. Yet, in order to maintain a pace of disposition which I believe is necessary, which seems reasonable to me, and which may even seem modest to some, we shall have to sell twice as much project land during each of the next ten years as has been sold in the entire preceding ten years.

Since we are now talking about what is in essence private real estate development with a brief interval of governmental intervention, these figures hit the mind and

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of East Orange, N. J., as a representative of the American Municipal Association and the New Jersey State League of Municipalities, May 23, 1960, in *1960 Senate Hearings* 720.

[21] Sec. 103(b) of the Housing Act of 1949, as amended by § 405(1) of the Housing Act of 1959, 73 Stat. 672, 42 U.S.C.A. § 1453(b) (Supp. 1959).

[22] According to information from the Urban Renewal Administration based upon calculations for 246 projects which were approved for contract as of Dec. 31, 1959, the amount of private investment, including the value of the land, is estimated at $2,872,996,000 and the amount of federal grant totals $512,520,000. This yields a ratio of $5.61 of private investment to $1 of federal grant, and examination of specific projects recently under way indicates this ratio will probably increase.

[23] As of June 30, 1960, a total of 2,368 acres have been disposed of for the sum of $113,600,000.

the imagination with stupefying effect. Lest these figures accomplish an unwanted result by creating the suspicion that the task is impossible, it should be understood that the program had to begin in 1949 with planning, followed by acquisition and relocation; therefore, the first disposition did not occur until March 1952.[24] But, lest I lose the shock effect necessary to my thesis, let me add that the sales occurred in 146 projects in ninety-two cities in twenty-five states,[25] but did not include all of the project land in these projects. For example, disposition is not yet completed in the project from which the first urban renewal sale was made in 1952.[26] As of June 30, 1960, the urban renewal program had grown to include 779 projects in 455 cities in forty-five states,[27] and it is still growing.

When an urban renewal area becomes vacant, prior to clearance, it is a sorry sight. The buildings are gutted by vandals and become havens for criminals and incipient criminals. The areas become fire hazards. People still living in those areas suffer severely; and, somewhere along the line, the percentage of empty houses becomes more than the remaining residents can bear, and they are forced out, regardless of the burden placed upon them of such premature moving. After demolition some of the hazards are removed, but the rubble-strewn areas are unlovely and difficult to tend, and they are unproductive for the whole community to see.

It has been suggested that a lag in the disposition of urban renewal project land is a blessing in disguise, in that the community blessed with unsold land has a "land bank."[28] This concept will be discussed in more detail below. For the purpose of the point to be made here, I suggest that, at best, a land bank could absorb only a portion of the real estate the enormous urban renewal program will provide; and in any event the continued accumulation of property for later sale, whether under the name of land bank or something less euphemistic, may postpone but will ultimately intensify the problem. In the meantime, friends of urban renewal must consider whether the continued accumulation of large amounts of undeveloped project land will promote public acceptance of the urban renewal program. One piece of evidence which may be pertinent to a consideration of this question is the unhappiness which has developed in Congress with delay in redeveloping certain urban renewal project land in the District of Columbia. The congressional concern

[24] The first disposition took place in the Lake Meadows Project, Chicago, Ill., 6-1.

[25] Sales in 23 states and 2 jurisdictions (the District of Columbia and Puerto Rico).

[26] Only 3.94 acres have not as yet been disposed of in the Lake Meadows Project, Chicago, Ill., 6-1, which had a total of 101 acres. This disposition should be completed by the end of 1960. The first project to complete disposition was the Waverly Project, Baltimore, Md., 1-1, in which the first disposition sale took place in June 1953, and disposition of the total project acreage of 21.3 acres was completed in November 1955.

[27] The program is in 42 states and 3 jurisdictions (the District of Columbia, Puerto Rico, and the Virgin Islands).

[28] "Delays and land lying idle are inevitable if urban renewal is going to do what it should do in downtown areas. Projects involving great investments do not spring full-blown upon the scene in the average-size American community. Delay counseled by realistic appraisal of land potential is *worthwhile delay*. So, my thesis is have *worthwhile delay* introduced into urban renewal, particularly in central city areas." Statement made by Lawrence M. Cox, Executive Director, Norfolk Redevelopment and Housing Authority, Norfolk, Va., in an address to the American Society of Planning Officials, National Planning Conference, held at Miami Beach, Fla., on May 22-26, 1960.

was evidenced by the Rabaut bill,[29] whereby Congressman Rabaut (Democrat, Michigan) sought to forbid further urban renewal projects in the District of Columbia until development of existing projects was fifty per cent complete.

The thrill of designing and starting something usually has a greater appeal to human nature than the rather dull business of finishing the job. There will be a natural tendency among LPAs to be more interested in planning and beginning the next project than in finishing off the last one. Of course, this is not a point of concern with an LPA which is beginning its first project. On the other hand, there is an administrative solution when an LPA with two or more projects is inclined to neglect disposition in favor of the romance of planning and beginning a project. The ability of an LPA to dispose of existing projects certainly has a bearing upon the feasibility of subsequent projects, so that the wording of existing legislation affords administrative leeway to meet this problem as well as it can be met within the bounds of the pressures created by the size of the program.[30]

There remains the question of how much money Congress shall pour into the urban renewal assembly line each year. If the money is made available, no one doubts that the cities will somehow find a way to ask for it. But before we make any substantial increase in annual authorizations, it would seem that someone should make a careful study of the amount of real estate which can be sold and developed over a given period of time. Since none of the organizations advocating greater spending has become interested in such a study, and since the bulk of the public funds involved come from the federal treasury and are disbursed through the Housing and Home Finance Agency, the federal treasury seems a likely source for the cost of this study and the HHFA seems a likely candidate to make the survey. The aims of this survey should be facts, not policy decisions, so that it should be made by technicians in the Executive Branch rather than by a joint committee of Congress. The survey would probably involve the use of the HHFA staff, but the Agency should also be in a position to utilize the resources of independent outside research agencies around the country.

One hundredth of one per cent (.01%) of the monies already authorized by the Congress for capital grant funds in the urban renewal program (in addition to which

[29] H.R. 8697, introduced by Congressman Rabaut (Democrat, Michigan) to the Eighty-sixth Congress on June 17, 1960, to amend the District of Columbia Redevelopment Act of 1945, as amended; passed by the House on June 27, 1960.

The bill was reported favorably by the Committee on the District of Columbia, which stated: "The Committee considers the provision prohibiting the designation of any new project area until all improvements have been completed on at least 50 per cent of the land in the Southwest area of the District to be imperative in view of the unjustifiable delay that has been experienced in that area to date." House Comm. on the District of Columbia, *Amending the District of Columbia Redevelopment Act of 1945 with Respect to the Requirements for Adoption of a Redevelopment Plan for a Project Area*, H.R. REP. No. 1911, 86th Cong., 2d Sess. 3 (1960).

[30] Sec. 105(c) of the Housing Act of 1949, as amended, 73 Stat. 672, 42 U.S.C.A. § 1453(c) (Supp. 1959), includes the following: ". . . financial assistance made available to any locality or local public agency upon submission and processing of proper application therefor shall not otherwise be restricted except on the basis of (1) urgency of need, and (2) feasibility, as determined by the Administrator."

substantial other monies have been spent for administration, planning grants, and so on) would probably provide a worthwhile report in this area.[81]

II

DISPOSITION UNBOUND

Left to its own devices, disposition never takes care of itself—as relocation almost always does to a certain extent. And like pregnancy—although, for example, unlike planning—there is no such thing as a partly sold parcel of real estate. Sooner or later urban renewal project land must be disposed of, and the LPA itself must do the job. Even if the proponents of sharply increased spending in the urban renewal program do not agree with my thesis that urban renewal starts should be regulated rather closely by urban renewal sales, or if they do not share misgivings about widespread acceptance of the land bank theory, certainly all can agree that sooner or later disposition must take place. The following table showing the increase annually in the total acreage of urban renewal land acquired but unsold demonstrates that the rate of disposition must be radically increased:

Acreage

(Based Upon Completed Transactions in Projects Under Loan and Grant Contract)

Fiscal Year (Ending June 30)	*Acquisition Completed*	*Disposition Completed*	*Accumulated During Year*	*Cumulative Inventory*
1950-1956 (cumulative figures)	1659	459	1200	1200
1957	665	187	478	1678
1958	865	464	401	2079
1959	1548	482	1066	3145
1960	3006	776	2230	5375
Total	7743	2368	5375	5375

[81] The Budget of the United States Government for the Fiscal Year Ending June 30, 1960, which was received by Congress on Jan. 18, 1960, as *House Document No.* 255, contained, at page 275, provision for the sum of $600,000 for housing investigation and research and analysis (pursuant to § 602 of the Housing Act of 1956, 71 Stat. 305, 12 U.S.C. § 1701d-3 (1958)).

Senator John Sparkman made the following statement at the Subcommittee Hearings of the Senate Committee on Appropriations, on May 23, 1960: "Mr. Chairman, my appearance before the Subcommittee today is to support the request of the Housing and Home Finance Agency for an appropriation of $600,000 with which to undertake a program of housing studies and analyses. This research is intended to improve the information available with respect to housing need, supply, and demand—including basic information on home mortgage markets and home financing.

"In my opinion, the need for such housing studies is vital. The Federal Government's investment and contingent liability in all housing and related programs is over $60 billion. Each year, the Congress and the executive branch of the Federal Government are called upon to make decisions which

To the extent that the rate of spending in this program is increased faster than land disposition, the volume of unsold, unlovely, and unproductive urban real estate in the hands of the LPAs will continue to increase. If it be conceded that disposition ultimately becomes necessary, then we are in accord that whatever steps are required to speed up disposition to the minimum level must be taken. What difference of opinion there is can relate only to the time. My thesis here is that the necessity must be recognized now and action taken immediately. But even if it is earlier than I think, the problem will be the same and the solution proposed here will be equally apt or inappropriate when we finally do feel the pressure of circumstances.

Of course, once we begin to prescribe action, there is again room for difference of opinion. I believe this program is so important that it must be made to work and that it is so big that it can work only if it is kept simple.

The real estate, which must be sold, will be competing for buyers with the vast volume of real estate sold each year in the private market, the great bulk of which does not actually have to be sold. The competing private sellers will almost never exact restrictions other than those, such as zoning, to which the use of all urban real estate is customarily subjected, and they will have great flexibility in their power and willingness to enter into financial and other arrangements necessary to accommodate the purchasers.

Every limitation or restriction more stringent than those customarily found in the market place which the LPA imposes upon urban renewal real estate will make it less desirable to the purchaser and will reflect itself in the price, the speed of sale, whether the property sells or not, the soundness and ability of the purchaser, and the quality of the redevelopment.

Such limitations and restrictions hinder the redevelopment phase of urban renewal for an additional reason, which is self-evident and which arises out of the nature of man when he is compounded with any bureaucracy, public or private.

Once rules have been developed for the restrictive activity of an LPA, two unintended results are usually produced. First, rules have a tendency to become goals in and of themselves rather than remaining a means to achieve the goals for which they were developed. To the extent that a rule attains vitality of its own, it tends to obscure the real purpose for which the rule was created.

Secondly, a bureaucracy, though the bulk of its activities are efficiently carried on to completion, almost always tends to operate well within the limits of discretion per-

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directly affect the soundness of these investments and liabilities. Necessarily, these decisions not only affect the soundness of the Federal Government's investment, but have a direct effect upon the Nation's economic stability.

"Unfortunately, many of these decisions must be made on the basis of surmise or calculated guess, without the benefit of facts, statistics, or information to support the conclusions reached. How often, during the past 10 years, have I heard the Administrator of the HHFA, or the heads of constituent agencies, answer questions by the members of the Banking and Currency Committee—'We do not have any figures, we have no idea,' or 'the best available information is from data compiled 10 years ago.'" *Hearings Before the Subcommittee of the Senate Committee on Appropriations on H.R. 11776*, 86th Cong., 2d Sess. 560 (1960).

mitted by the rules, and as a result action is restricted to a greater extent than orginally intended and speed is retarded where not intended at all.

Speaking generally, this observation is neither new nor advanced. The difficulty in preventing an organization from strangling on its own red tape is popularly recognized. And yet when the reference is changed from general to specific, human nature seems more inclined to ignore the problem rather than to do something about it. To relate this discussion to urban renewal, it is necessary and highly practical to recognize that in any program so big and complex every unnecessary control will impede action materially.

URA concurrence is presently required for the sale of project land. As long as federal funds constitute a major part of the cash investment in urban renewal land, this requirement is wise and is unlikely to be changed. The veto power thus provided should be and is used primarily to insure compliance with statutory requirements as to the use of project land and its selling price. One practical expression of the federal interest in disposition has taken the shape of a recommended form for use in the sale of project land.[32]

The federal government also shares the interest of the LPA that project land should be sold as quickly as is consistent with attainment of the urban renewal objectives. In addition to other losses which accrue when such real estate remains unsold, the city and the federal government share in the (standard one-third, two-thirds proportion) increase in net project cost which results from the interest which accumulates on the temporary loan and the payments made to the city in lieu of taxes.[33] Both the federal government and the city lose money every day there is unnecessary delay in disposition.

The 1957 Guide Form[34] is too long, too complicated, and too one-sided to promote the sale of urban renewal land with the speed and flexibility necessary to the long-range success of the program. Strong representations to this effect have come from almost every attitude of interest in the program—federal, local, and private.[35]

[32] HOUSING AND HOME FINANCE AGENCY, URBAN RENEWAL ADMINISTRATION, GUIDE FORM OF CONTRACT FOR DISPOSITION OF LAND FOR PRIVATE REDEVELOPMENT, FORM H-6209, (1957) [hereinafter cited as 1957 GUIDE FORM H-6209].

[33] Sec. 110(e), (f), Housing Act of 1949, as amended, 71 Stat. 300, 42 U.S.C. § 1460 (1958).

[34] 1957 GUIDE FORM H-6209.

[35] Meeting of the Regional Counsel of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

See also Memorandum from Edward H. Coulter, Chief, Urban Renewal Section, Legal Division, FHA, to A. M. Prothro, Deputy General Counsel, Federal Housing Administration, in connection with Land Disposition Contract, Urban Renewal, which contains the following: "That document constitutes a contract between the Local Agency and the Redeveloper; and the [Federal Housing] Commissioner's interest at all in the contract is to be assured that it contains no covenants that adversely affect title, or that are in conflict with the Commissioner's rights of regulation or control, or that could result in impairment of the mortgage lien. The fact that the covenants of the Disposition Contract 'carry over' into the deed, whether or not they are expressly incorporated therein, and the failure to follow the approved form of Disposition Contract, make it imperative, under present procedures, that all such contracts be closely and intensively reviewed to assure that they do not contain these objections. This calls for the expenditure of much time and effort that could be avoided. The immensity of the task may be somewhat illustrated by the statement that, while the approved form consists of 13 letter-size printed pages, the majority of the submitted forms consist of 50 to 75 legal-size typed pages. It is imperative, therefore, that some action be taken to correct the existing situation."

URA presently has under consideration a simplified guide form contract for the disposition of land. Its adoption would (1) increase the number of those redevelopers willing to accept the 1957 form of contract by many others who up to this time have been discouraged by stringent disposition requirements; (2) permit nation-wide uniform use of a simplified form; (3) speed up disposition of project real estate; and (4) avoid unnecessary discrimination against redevelopers and inconsistencies in projects throughout the country—a natural result of the haggling process in which an LPA begins negotiations with a very stringent contract and moves toward simplification and relaxation of requirements according to the resistance of the individual redeveloper and the attitude toward detailed control of the federal and local personnel involved in the individual sale.

Appended to this article is a simplified form of disposition contract which I recommend in place of the one adopted in 1957. This is the form under consideration by URA. The following discussion relates to some of the specific provisions wherein the 1957 form and the form presently under consideration vary.

III

SIMPLIFYING THE DISPOSITION PROCESS

A. Urban Renewal Plan

The urban renewal plan, previously termed the "redevelopment plan,"[36] by identifying the objectives and means and manner of accomplishing redevelopment provides the basis and frame of reference for each urban renewal project. Because it is the plan for the local community, a public hearing is held, at which time the citizens of the community are given ample opportunity to express their views fully.

The URA has eliminated a great deal of the detail that had originally been required in an urban renewal plan,[37] so that at present the plan need only include a description of the project area and provisions of acquisition, clearance, relocation, rehabilitation, conservation, redevelopment, land uses, building requirements, and redevelopers' obligations,[38] all of which should be presented in a brief and concise form.

In addition to specifying the duration of the plan, adequate provision should be made for amendment of the plan and enforcement of restrictions and controls. The plan should also contain provisions to the effect that property-owners within the project area, as well as the LPA or other public authority designated by the governing body of the city, have the right to enforce the control standards for the project area.

[36] Sec. 110(b) of the Housing Act of 1949, which provided for a "Redevelopment Plan," was amended by § 311 of the Housing Act of 1954, to provide for an "Urban Renewal Plan." 68 Stat. 626, 42 U.S.C. § 1460(b) (1958).

[37] HOUSING AND HOME FINANCE AGENCY, SLUM CLEARANCE AND URBAN REDEVELOPMENT PROGRAM, MANUAL OF POLICIES AND REQUIREMENTS FOR LOCAL PUBLIC AGENCIES pt. 2, ch. 5, § 2 (1955).

[38] HOUSING AND HOME FINANCE AGENCY, URBAN RENEWAL ADMINISTRATION, URBAN RENEWAL MANUAL, POLICIES AND REQUIREMENTS FOR LOCAL PUBLIC AGENCIES pt. 10, ch. 3, § 2 (1960) [hereinafter cited as URBAN RENEWAL MANUAL].

B. Use and Price Restrictions

Title I requires that urban renewal project land be sold for use in accordance with an urban renewal plan; a further requirement is that the property be sold at not less than its fair value for the prescribed use.[39] Skillful administration on the federal side of the program is sometimes required to reconcile these two statutory requirements as they are interpreted by the LPAs.

The statement is frequently made that urban renewal project land is sold at a "write down." This misconception no doubt contributes, even among those who work in the program, to the persistence of efforts to use the urban renewal program to subsidize forms of organization and activity which the local community and the LPA favor and approve. The federal subsidy contained in urban renewal legislation is to the local community, and it is paid with respect to the cost of assembling the property and, for a clearance project, of clearing existing structures. However, nowhere in the federal urban renewal law is there any indication that the land in any instance would be sold thereafter at less than its fair value—in which case the price differential from the land's fair value constitutes a subsidy of the purchaser by the LPA in its disposition. On the contrary, as previously pointed out, the statute requires that the land be sold for its full fair value for its use in accordance with the urban renewal plan.

Many suggestions and some attempts have been made to limit the income to be derived from the property in the guise of limiting the use. Limitations of use are older than zoning and in certain cases are now recognized as proper subjects of governmental control. There is a growing trend toward the definition of uses in terms of control standards, such as volume of air pollution, stream pollution, noise emission, and so on. I know of nothing that indicates that the income of the owner or tenant or the rent that he pays can be defined as a use. Thus, the limitation to residential purposes relates to use; an added limitation as to the rent to be paid by tenants does not relate to use, but rather to price.

The legislative history of section 107,[40] which relates to the sale of project land for use as low-rent public housing, supports this interpretation of the statute. This section, as it existed prior to the Housing Act of 1959, provided for the price at which land was to be sold for federally-assisted public housing.[41] In effect a subsidy to public housing is allowed as a result of the 1959 Act, which amended this section to provide that the price to the public housing agency shall be the value of the land to a

[39] Sec. 110(c)(4) of the Housing Act of 1949, as amended, provides that an Urban Renewal project may include "disposition of any property acquired in the urban renewal area . . . at its fair value for uses in accordance with the urban renewal plan." 71 Stat. 300, 42 U.S.C. § 1460(c)(4) (1958).

[40] Sec. 107, Housing Act of 1949, as amended, 68 Stat. 626, 42 U.S.C. § 1457 (1958), is sometimes referred to as the section relating to "payment for land used for low-rent public housing."

[41] Sec. 107 of the Housing Act of 1949, *supra* note 40, originally read as follows: "If the land for low-rent housing project assisted under the United States Housing Act of 1937, as amended, is made available from a project assisted under this title, payment equal to the fair value of the land for the uses specified in accordance with the redevelopment plan shall be made therefor by the public housing agency undertaking the housing project, and such amount shall be included as part of the development cost of the low-rent housing project." 63 Stat. 419, 42 U.S.C. § 1457 (1958).

private redeveloper who wished to construct on its land housing with the same characteristics as the low-rent housing that the local housing authority wishes to construct.[42] Congress carefully avoided making the criterion relate to rent. The criterion here is expressly made the physical characteristics of the housing to be erected.[43] In this case the result is to provide a subsidy, but the income standard is avoided as a direct test. Further, state or locally-assisted housing having the same general characteristics as the federal program is included in the subsidy provision. The fact that it was considered necessary specifically to include such housing in the statute in order to make the provision applicable to it establishes the intention of Congress not to extend the "write down" provision to other forms of limited income housing not mentioned in the statute.

Sometimes the plan calls for a use which very obviously has implicit price restrictions. For example, there are no standards for determining the value of land to be used as a public park; and, in fact, land so used has no commercial value whatsoever. Some uses specified in an urban renewal plan in effect deprive the land of any real value for sale purposes. For example, the valuation of land which is to be used for public purposes is determined by an appraisal based upon the best alternate use.[44] The alternate use should be the best use to which the land could be put consistent with the general aims of the urban renewal plan.

An LPA wishing to manipulate the price for the benefit of the purchasing public body or other purchaser may seek to designate an alternate use which is not realistic and which is chosen because of the low value it would give to the real estate rather than because it is the highest use consistent with the plan. In such circumstance the URA will refuse to acquiesce in a land disposition based upon such an appraisal.

The original emphasis in the urban renewal program on the reuse of project land for residential purposes is indicated by the limitations which were imposed

[42] Sec. 107 of the Housing Act of 1949, as amended by § 411 of the Housing Act of 1959, 73 Stat. 674, 42 U.S.C.A. § 1457 (Supp. 1959) reads as follows:

"When it appears in the public interest that land to be acquired as part of an urban renewal project should be used in whole or in part as a site for a low-rent housing project assisted under the United States Housing Act of 1937, as amended, or under a state or local program found by the Administrator to have the same general purposes as the federal program under such Act, the site shall be made available to the public housing agency undertaking the low-rent housing project at a price equal to the fair value of land to a private redeveloper who wants to buy a site in the community for private rental housing with physical characteristics similar to those of the proposed low-rent housing project, and such amount shall be included as part of the development cost of such low-rent housing projects. . . ."

[43] URBAN RENEWAL MANUAL pt. 14, ch. 3, § 3: "If none of the land comprising the site was acquired by the LPA before September 23, 1959, the fair value shall be determined in accordance with the following definition:

"The fair value of a site for a low-rent public housing project means the maximum price that would be paid for the site by a well-informed private redeveloper who wants to buy a site in the community for private rental housing with physical characteristics similar to the proposed low-rent housing project and who acts intelligently and without necessity in buying a site for such use."

[44] URBAN RENEWAL MANUAL pt. 14, ch. 1, § 1 provides that when land is to be devoted to a public or nonprofit institutional use, the fair value of the land shall be based on its value for the most suitable alternative private use or uses for the land.

by Title I on nonresidential project uses.[45] It has become evident that for the success of an urban renewal project nonresidential blight must be eliminated along with slums and that land must be converted to its best logical use. Consequently, assistance has been increased for nonresidential project uses and there has been considerable de-emphasis on housing in specific project areas, in favor of the community-wide approach.[46] Assistance for nonresidential project uses has been expanded by reducing requirements and by increasing the percentage of urban renewal funds available for predominantly nonresidential projects.[47]

C. Declaration of Restrictions

Immediately involved in the sale of project land are the contract and the deed. Some of the documents less directly related, such as those concerned with bidding and qualification, are discussed elsewhere.

Of course, the urban renewal plan itself is involved, since the land use restrictions

[45] Sec. 110(c) of the Housing Act of 1949, 63 Stat. 420, read as follows:

"(c) 'Project' may include (1) acquisition of (i) a slum area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or (iii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses. . . ."

Sec. 110(c)(6) of the Housing Act of 1949, as amended by § 302(b)(1) of the Housing Act of 1956, 70 Stat. 1098, read as follows:

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not clearly predominantly residential in character unless such area will be a predominantly residential area under the urban renewal plan therefor: Provided, That, where such an area which is not clearly predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare in the locality involved and such area is not appropriate for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this title with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this title."

[46] Sec. 110(c) of the Housing Act of 1949, as amended by § 413 of the Housing Act of 1959, 73 Stat. 675, 42 U.S.C.A. § 1460(c)(6) (Supp. 1959), reads as follows:

". . . Provided, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this title for such a project . . . ."

[47] Sec. 110(c) of the Housing Act of 1949, as amended, presently provides that an urban renewal project may include undertakings and activities as follows:

". . . (1) Acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community . . . ."

Sec. 110(c) of the Housing Act of 1949, as amended by § 413 of the Housing Act of 1959, 73 Stat. 675, 42 U.S.C.A. § 1460(c) (Supp. 1959), provides that

"Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: Provided, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this title for such a project: Provided, further, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of the Housing Act of 1959 shall not exceed 20 per centum of the aggregate amount of grants authorized by this title to be contracted for after such date."

are set forth in it. There has been a considerable deviation from uniformity in the methods of working the land use restrictions that are contained in the plan into the other disposition documents. In some states the urban renewal plan has been recorded as a real estate document. In others it has been filed in various places.

Urban renewal plans have varied considerably in length and detail. When a plan is recorded and when the other disposition documents, particularly the deed, refer to the provisions of the plan, a burden is being prepared for title examiners who review title documents on this property ten, twenty, or thirty years from now. A lawyer who may have had little experience with urban renewal will be called upon to examine an entire urban renewal plan in order to reach his own conclusion as to the identity and meaning of the portions of the plan which affect the title.

As one means of avoiding future trouble, it has been suggested that the provisions of the urban renewal plan that run with the land should be excerpted from the plan and recorded in the form of a declaration executed with the formality of a deed. This would have the double advantage of introducing simplicity in the states where otherwise the entire plan itself would have been recorded and of getting something of record in those states where the urban renewal plan is not entitled to record and has not been recorded.

One objection to this suggestion is that some plans are poorly drawn and scatter pertinent provisions throughout the plan, so that making an excerpt to be recorded would be difficult. The obvious answer is that if this is difficult now for a lawyer familiar with both the urban renewal program and the specific project in question, the burden in later years to a lawyer who would probably have less familiarity with the specific project and who might even be unfamiliar with the program generally would be almost impossible. The Urban Renewal Administration has an obligation to do what it can to promote simplicity and merchantability of urban renewal project land in future years. As a matter of uniform practice URA should encourage, if not require, the recording of a declaration of land uses which would consist of the pertinent excerpts from the urban renewal plan executed in an instrument of such formality as will entitle it to record. A suggested form of such declaration is appended to this article.

The purpose of the urban renewal plan is to define the land uses. Neither the deed nor the disposition contract should be used to embellish or correct the plan, but they should provide for adherence to the uses defined in the plan in the briefest form which will be effective. A recorded declaration of land uses which can be succinctly incorporated by reference will simplify the establishment of restrictions and will reduce the possibility of variance, either accidental or deliberate, between the uses provided in the plan and in the land disposition documents.

D. Sales Preferences

A question which has been and probably will continue to be the subject of active scrutiny relates to preferences to certain persons in the disposition of project land.

The one which evokes the most sympathy would give a preference to displaced businesses. The requirement of such a preference has found its way into some state laws.[48] Legislation to accomplish this purpose has been introduced in Congress but has made little progress,[49] partly but probably not entirely because of adverse reports on the proposal from HHFA. The practical difficulties which so far have prevented these provisions and proposals from having significance seem insurmountable. For one thing, the businesses in question are displaced early in the urban renewal process, and if they have not re-established themselves elsewhere by the time redevelopment is completed several years later, it is unlikely that they would have either the interest or the ability to return to the area, or that it would be feasible for them to do so. Even if they were to come in at the earliest possible stage of the urban renewal program, it would be an unusual set of circumstances that would permit a business to re-establish itself in the project area without a suspension of business long enough to ruin most businesses. It was generally considered by HHFA regional counsel that if a preference procedure were adopted which effectively accorded displaced businesses a preference for location in or as a developer of the project area, such preferences would not be used for the purpose of relocating in the area, but would become an item of trade.[50]

Such a preference is frustrated more effectively by another fact of urban renewal life. Very seldom can the exact same property be sold to a displaced business consistent with the urban renewal plan. Usually the plan calls for a use that requires the marshalling of contiguous parcels and an arrangement of improvements that will not permit reconstruction of the same type of improvement on the same property as before or for the same purposes for which the property was previously used. On the other hand, if the preferences extended beyond the specific property which the displaced business occupied before, there is no way to adjudicate between the claims of many displaced businesses. The consensus of counsel who have been working with the program was that any effort to enforce such a preference would so depress

[48] Hawaii, California, Texas, and Puerto Rico are some of the states and jurisdictions which provide for a type of preference to displaced persons and businesses.

[49] Amendment introduced by Representative Powell of New York, 95 CONG. REC. 8549 (1949), which read as follows:

". . . to give preference in the selection of tenants for the dwelling units built in the project area to families displaced therefrom because of clearance and redevelopment activity, who desire to live in such dwelling units and who will be able to pay rents or prices charged other families for comparable dwelling units built as part of the same redevelopment."

This was approved by the House by a vote of 199 to 41, but was later rejected by the conferees; see *Conference Report to Accompany S. 1070, Housing Act of 1949*, H.R. REP. No. 975, 81st Cong., 1st Sess. 36 (1949), as follows:

"The House amendment contained a provision that the contracts for financial aid made for slum clearance in communities for development and redevelopment purposes should require that preference in the selection of tenants for dwelling units built in the project area be given to families displaced therefrom because of clearance and redevelopment activity when such families desire to live in such units, and are able to pay rents or prices charged to other families for comparable dwelling units built as part of the same development. Neither the Senate bill nor the conference substitute contains a similar provision."

[50] This aspect was pointed out at the Regional Counsel Meeting of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

both the interest in and the value of urban renewal project land that the incentives will be to plan away from such preferences rather than for them.[51]

Another type of limited preference is the one expressed in a New York City statute permitting an LPA to negotiate with a prospective redeveloper for assistance in making the redevelopment plan, and in consideration for this assistance giving the redeveloper the right to match the highest bid when the property is put up for sale.[52] Whether under this procedure there will be any real competition in bidding remains to be seen. The New York Regional Office has some hope that other redevelopers will not be discouraged from bidding by the fact that the favored redeveloper can always match the highest bid and be the successful bidder.

In other areas which do not have a statute, agreements have been negotiated whereby the redeveloper agrees to assist the LPA in developing its plan with the understanding that he will be given an opportunity to negotiate with the LPA.[53] Although such a "Memorandum of Understanding" may make no legal requirements upon the LPA, it is evident that the LPA may consequently have a strong moral urge to see that the interested redeveloper is successful.

E. Selling Techniques

Of the two principal techniques which are used in the sale of urban renewal project land, information supplied by HHFA Regional Offices indicates that in 350 sales transactions by LPAs, seventy-eight were by competitive bidding procedure[54] and 272 were by negotiated sale.[55]

[51] *Ibid.*

[52] N.Y. MUNIC. LAW § 72-k, subd. 2, in addition to other requirements, provides that real property in substandard and unsanitary areas ". . . shall be so sold, leased or disposed of to any person, firm or corporation who (1) agrees to pay the minimum price or rental fixed by the municipal corporation for such property, and to participate in the planning for such property without payment or reimbursement therefor from the municipal corporation, (2) thereafter participates in such planning in a manner satisfactory to the municipal corporation, and (3) matches any bid higher than said minimum price or rental. . . ."

[53] This provision was included in a "Memorandum of Understanding" entered into between the District of Columbia Redevelopment Land Agency, Washington, D.C., and Webb & Knapp, Inc.

[54] Competitive bidding procedures include auction sales, open bidding, closed bidding, and matched biddings.

[55]

HHFA Regional Offices	No. of Transactions Reported: Negotiated Sale	Competitive Bidding Procedures
Region I	67	38
Region II	66	19
Region III	110	14
Region IV	11	6
Region VI	2	1
Region VII	16	
Total	272	78

Preliminary to competitive bidding, most LPAs have required that a bidder must prequalify by making an initial bid of at least the appraised value of the property, by depositing in cash or other securities a percentage of such appraised value, and by agreeing that if he is the successful bidder, he will execute the form contract attached to the bidding documents. The majority of the Regional Counsel are of the opinion that prequalification is unnecessary, as well as undesirable, in many instances, due to the fact that it limits the scope of bidders and defeats the main purpose of competitive bidding.[56]

Unqualified state statutory requirement of competitive bidding[57] causes a real problem in circumstances where competitive bidding is not feasible. When adherence to the form of competitive bidding does not fit the circumstances, after the auction, the LPA is forced to achieve its necessary objectives by renegotiating parts of the contract.

The technique of selling property varies in each case depending upon such elements as the size of the property, the market, and the use for which the property is to be sold.[58] Whenever the circumstances indicate that competitive bidding is suitable, LPAs should employ this technique because competition will invariably step up the sales price and in public opinion may be considered more equitable. However, rigid requirements which provide solely for competitive bidding should be eliminated.

F. Security for Performance

The 1957 Guide Form[59] and contemporary *Urban Renewal Manual* provisions[60] require security for two types of performance, the purchase of the property and completion of the improvements.

A deposit by the purchaser, at the time the contract for the purchase of land is executed, to be held as security for completion of the transaction, is sound business and in accordance with almost universal practice. The deposit of money or delivery of a bond to assure improvement of the property after the purchaser has paid for it is as new to the real estate field as the urban renewal program itself.

The security for completion of redevelopment originated because of the LPA's unquestionable interest in the completion of the improvements in accordance with the limits established by the Urban Renewal Plan. It is pertinent to reconsider in the light of experience since 1957 what the benefits are of such a deposit or bond, and whether the burden of such a requirement upon the redeveloper might constitute a drag upon the program sufficient to cancel out or exceed any benefits which might accrue.

[56] Regional Counsel Meeting of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

[57] In addition to competitive bidding, other state statutory requirements may provide for such items as public hearing and publication as prerequisites to sale of urban renewal project land.

[58] URBAN RENEWAL MANUAL pt. 14, ch. 3, § 1 offers a guide for the selection of methods of disposal of land for project redevelopment.

[59] 1957 GUIDE FORM H-6209.

[60] URBAN RENEWAL MANUAL pt. 14, ch. 2, § 3.

This is an area in which judgment cannot be precise. If there is a deposit, it is usually is an amount equal to five per cent but never more than ten per cent of the purchase price of the project land. When it is considered that the improvements which the redeveloper is required to place on the land will cost between five and ten times the purchase price of the land, it will be seen that the security deposit will at most equal about two per cent of the cost of the performance which it is intended to secure and in many cases will be approximately one-half of one per cent of such cost.

This deposit is too small to be significant as security for payment of damages for breach of the disposition contract, and, in any event, since accomplishment of the redevelopment plan is the only achievement of significance to the LPA, the deposit to secure performance can be judged only in relation to its tendency to attain or discourage this result.

Even at its best, the urban renewal program will never permit the redeveloper to get in and get out as fast and with as small an investment as will be possible in many other fields of real estate development. Neither the program in general nor a specific urban renewal project will benefit from a provision which materially increases the capital requirements of redevelopers. A cash security deposit in the amount we are discussing here would in most cases equal from ten to fifty per cent of the cash operating requirements of the redeveloper after he had purchased the land and had embarked upon the construction. Even if the disparity between the great burden to the redeveloper and the small benefit to the LPA is not as clear-cut and as enormous as it appears to me, the conclusion seems inescapable that the net effect of such a requirement is far more of a drag on the program than it is a benefit. If redevelopers are qualified by the use of reasonably sound judgment, soundly conceived projects should weather the vicissitudes of redevelopment without resort to such a deposit; and if difficulties arise because a project has been undertaken which is not sound, the redeveloper should be the last person to be penalized.

An alternative to the use of a cash deposit has been a performance bond. Such bonds have not in practice been uniform, although the *Manual*[61] as its exists at the time of writing is clear enough to provide the basis for uniform practice. However, as has been the case with the other provisions in the Guide Form which have differed materially from established custom, practice over the country has not been uniform. Redevelopers have been treated differently according to the part of the country involved and the persistence in maintaining an objection. In amount, cash deposits have varied more than bonds, although both have varied. Bond

[61] *Id.* pt. 14, ch. 2, § 3, at p. 4, where provision is made for the redeveloper entering into a satisfactory contract for the construction of improvements and furnishing the LPA with ". . . a satisfactory faithful-performance surety bond. The penal amount of the bond shall be not less than 10 per cent of the contract for the construction of the improvements, with the construction contractor as principal and the redeveloper, the lender, and the LPA as obligees."

The section also provides that "A surety bond shall be required to be from a company listed in the current U.S. Treasury Department Circular 570, and within the underwriting limits specified for the company in the Circular." *Id.* at p. 3.

provisions have varied from strict compliance with the *Manual* to a complicated form which really chases its tail in an ever decreasing concentric circle and finally disappears. The existing provision may be satisfied by a bond similar to that which would be required by any careful mortgage lender and which would be required by the FHA if insured construction advances were involved. The overwhelming majority of counsel from the Regional HHFA offices, the URA, and HHFA General Counsel offices who attended a Washington review of the disposition process[62] were of the opinion that the net result of abandoning the provisions of security for performance would be a benefit to the program.

G. Escape Clause

The 1957 Guide Form[63] and the one endorsed here[64] both include provisions permitting the redeveloper to escape the obligation if he cannot obtain reasonably satisfactory financing. This is a provision not uncommon in times of tight money in private contracts, particularly in the case of residential real estate. It is unusual in the case of vacant land and in connection with the sale of real estate owned by political subdivisions.

One reason why this provision is seldom encountered in private transactions involving vacant land is because of the prevalence of options under such situations. Frequently an investor who intends a multifamily residential, a commercial, or an industrial use for real estate knows prior to purchase the use to which he intends to put the land and has his financing arrangements made. In the case of multifamily residential construction, where FHA valuations of land and construction are vital to a project, the redeveloper or investor protects himself during his FHA negotiations by an option.

The urban renewal redeveloper needs some protection even more than the investor in a private transaction. His contract carries restrictions as to use and limitations as to time not imposed upon the purchaser of vacant real estate in a private transaction, and in the event some of his calculations go wrong he is not in the same position to sell the real estate as he would be if he had bought it from a private owner. Since it has not been considered feasible in this program for the LPA to give an option to a redeveloper, the only answer to the redeveloper's problem that has been found to date is to insert in the disposition agreement an escape clause which admittedly is subject to abuse if a redeveloper so chooses. It would be a rare situation when a redeveloper would be unable to arrange not to obtain financing if he so desired. But, if a redeveloper chooses to escape from his contract for reasons other than financing, even though he then gives financing as his basis for withdrawing, the LPA is in no different circumstances than it would have been had it given an option. The LPA should be alert to prevent dilatory action on the part of a re-

[62] Regional Counsel Meeting of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

[63] 1957 GUIDE FORM H-6209.

[64] See *Proposed Guide Form of Contract for Land Disposition*, which is appended to this article.

developer which might in effect permit him to deal in urban renewal futures. A redeveloper who does not appear to be sincere or who is handicapped by problems of his own unrelated to the quality of the project land and of the proposed redevelopment should be forced to act or withdraw, rather than be permitted to stall for time in the hope that the passage of time will cast at his feet an opportunity to profit from the bare fact that he has the contract.

It has been suggested by URA Commissioner David M. Walker that in order to weed out redevelopers who might be dilatory in redevelopment, the LPAs should carefully check the past performance of the proposed redeveloper. Before disposition, it would not be unwise for the LPA to require the redeveloper to submit a qualifying document which would list all urban renewal projects which the proposed redeveloper has completed or undertaken, or for which he was then negotiating or bidding. The performance record of the redeveloper would be a useful barometer which could easily be checked by the LPA and in many instances prevent undue delays in redevelopment.[64a]

Of course, there is a need to bring many new redevelopers into the program. Therefore, the "past performance" criterion should not be applied in a way that would discriminate against those contractors who had not previously done any urban renewal work. On the other hand, for those who do have a "record"—whether good or bad—there is clear importance for the LPA to enter into and apply its disposition contract with full knowledge thereof.

H. Form of Deed and Disposition

The Guide Form of Contract for Disposition of Land for Private Redevelopment, initiated in 1957[65] for the use of LPAs in contracting for the disposal of project real estate, provides for the use of quitclaim deeds, although there is no objection to the use of a warranty deed. By local law many LPAs are unable to give a warranty deed, and as long as such provisions exist in local law, of course, they will control. However, the use of quitclaim deeds does not appeal to the real estate developer. His reactions to this vary in different parts of the country, extending from an absolute refusal to accept such a deed in some areas to mere lack of enthusiasm in other parts of the country. In any case, since there is no place where the use of a quitclaim deed is standard real estate practice, the conclusion seems inescapable that the market place will somehow, somewhere, in the course of the transaction, exact its price for this deviation from custom.

The interposition of a quitclaim deed into a chain of title deprives the purchaser of the benefit of warranties by predecessors in title and prevents the conveyance to the purchaser of after-acquired titles by predecessors in the chain through the vehicle of estoppel.[66] It has been suggested that conveyance of after-acquired title by estoppel

[64a] This information should be reflected by the Redeveloper's Statement for Public Disclosure and the Redeveloper's Statement of Qualification and Financial Responsibility.

[65] 1957 GUIDE FORM H-6209.

[66] 5A GEORGE W. THOMPSON, REAL PROPERTY § 2704, at 1079, 1081 (1940).

is a source of trouble in states where case law or recording statutes do not adequately prevent injustice in certain situations. This may be true, but if there is a defect in the basic real estate law of a jurisdiction, it should be corrected by statute and not here and there by the urban renewal program.

Indeed, the uniformity of disposition phases of urban renewal on a national basis and the adherence of urban renewal disposition practices to those of the private market place would suggest that where an objective of urban renewal itself is not contravened, it would be desirable that state statutes be amended to permit LPAs to give warranty deeds. A beginning can be made by suggesting to LPAs that the standard form of conveyance be by general warranty deed, with special warranty or quitclaim being used only when the less limited type of instrument cannot legally be used.[67]

In addition to disposition of urban renewal project land by conveyance of deed, Title I also permits the leasing of such land.[68] In order to make it feasible for an LPA to lease project land and still be able to obtain federal financing, Congress authorized loans to the LPAs for a period up to forty years.[69] This type of long-term loan is to be distinguished from the more temporary loan used to finance an urban renewal project through acquisition and disposition where the disposition is to be handled by sale. To date only one of these long-term loans has been made and closed out in connection with the leasing of urban renewal lands.[70] Today disposition by leasing is at an early stage of development and has been the subject of extensive consideration and discussion by federal, municipal, and private groups. For this reason, the various aspects of disposition by leasing will be treated in a special article to appear in the second part of this symposium on *Urban Renewal*.

I. Reverters

The basic tool proposed by the 1957 Guide Form[71] to compel performance by the redeveloper was a reverter with right of re-entry reserved to the LPA. This provision has evoked reactions varying with the part of the country and the redeveloper involved.

Some redevelopers and their mortgagees have accepted the reverter provision with relative equanimity. At the other extreme, some Regional Offices report that, as a general proposition, it has been impossible to promote the sale of project land subject to the proposed reverter, with the result that one Regional Office has made no

[67] The *Proposed Guide Form of Contract for Land Disposition*, which is appended to this article, provides for conveyance by general warranty deed.

[68] Sec. 110(c)(4), Housing Act of 1949, as amended, reads as follows:

"(4) disposition of any property acquired in the urban renewal area (including sale, initial leasing or retention by the local public agency itself) at its fair value for uses in accordance with the urban renewal plan." 73 Stat. 675, 42 U.S.C.A. § 1460(c)(4) (Supp. 1959).

[69] Sec. 102(a) of the Housing Act of 1949, as amended, 73 Stat. 671, 42 U.S.C.A. § 1452(a) (Supp. 1959).

[70] The definitive loan was made for the Lower Hill Project, 7-1, Pittsburgh, Pa., which involved a lease for a municipal public auditorium, from the Redevelopment Authority of Pittsburgh to the Public Auditorium Authority of Pittsburgh.

[71] 1957 GUIDE FORM H-6209.

effort to popularize the reverter with LPAs and prospective redevelopers. Between these extremes is a Regional Office which has been putting the reverter forward in the first negotiation but makes no effort to insist on the reverter when the redeveloper or the prospective mortgagee demurs. Obviously, the response to the reverter provision has been far from uniform.

The reverter seems to have been relatively more acceptable in the New York Region, with the Chicago office finding the second highest degree of acceptability. However, in Massachusetts, a state in which redevelopers have had to accustom themselves to more complications than have existed in most others, counsel for a redeveloper submitted to the Regional Office a forceful analysis of the disadvantages of such a reverter as a barrier to sound financing.[72]

The case for the reverter is that (1) it will last only until completion of the redevelopment, (2) the reverter recognizes the lien of the mortgage, and (3) it will not affect the redeveloper unless he defaults in his contractual obligations. The trouble with this argument is that it does not recognize the infinite variety of factual situations which can give rise to sincere differences of opinion. Even though it is undoubtedly realistic to recognize the possibility in such a tremendous program that insincerity may raise its Janus head, the use of such a powerful and unequivocal weapon as a reverter so tips the scales in advance of a dispute as to suggest (to borrow slightly from Thurman Arnold) faith in the essential malevolence of redevelopers and the essential right-mindedness of LPAs.

The purposes and the express language of federal urban renewal legislation contemplate that local authorities will effectively require redevelopment in accordance with an urban renewal plan.[73] It is necessary that the LPA secure compliance with these requirements by provisions in the disposition documents. The only alternative to a reverter which would allow sufficient specific control to be retained over the project land so as to satisfy the requirements of the statute is a covenant to reconvey.

Objection to the covenant to reconvey, which is subject to specific enforcement, has been based on the fact that it is not a summary remedy.[74] In the case of a real dispute a suit to enforce reconveyance can be the subject of protracted litigation. Even in a case where it is obvious that the redeveloper has no defense at all, it is

[72] Information concerning attitudes toward reverter and acceptance was obtained from the proceedings of the Regional Counsel Meeting of the Housing and Home Finance Agency in Washington, D.C., on July 25 and 26, 1960: information included in a letter dated July 18, 1960 from Rackemann, Sawyer & Brewster, Counsellors at Law, Boston, Mass., to Henry Zimmerman, Regional Counsel, Region I, Housing and Home Finance Agency, in connection with the Rogers Project, 7-2, Cambridge, Mass.

[73] Sec. 105(b) of the Housing Act of 1949, as amended, 73 Stat. 673, 42 U.S.C.A. § 1455(b) (Supp. 1959).

[74] 9 THOMPSON, *op. cit. supra*, note 66, § 4733, at 310, in speaking of an agreement to convey, states that ". . . a positive act by the grantee is necessary to reconvey to the grantor where there has been a contract to reconvey." 4 *id.* § 2186 provides that in a possibility of a reverter, ". . . the estate reverts at once upon the occurrence of the event by which it is limited."

feared that he might attempt delaying litigation solely for the purpose of extorting from the LPA some financial concession.

From the public point of view there is never any completely satisfactory solution to any dispute which has reached the litigation stage. Either party, of course, would in almost every case be completely satisfied if he could obtain summarily the results which he hopes to obtain by reason of legal action. Any lawyer who has engaged in litigation to which Government is a party knows what a difficult adversary the Government is. In addition to the fact that the urban renewal program does not present a need for unbalancing this situation even further in favor of the LPA by means of a reverter, lawyers representing clients who deal with the Government are able to discern the disadvantages to which their clients will be put. The inevitable result is that in the long run, some redevelopers will either stay out or get out of the program and those who do participate will in some way openly require or quietly maneuver a *quid pro quo* for the disadvantage.

Actually, people who are clearly wrong rarely engage in substantial litigation, particularly when the adversary is a unit of government. In the case of urban renewal, this should be particularly true because the wrong-minded redeveloper would be fighting city hall over a project in which the whole community has a visible interest.

In any event, it would seem that the possibilities of litigation in the local urban renewal programs have somewhat different implications than the supporters of the reverter clause may believe. I doubt if there is any Anglo-American jurisdiction where it is impossible for an owner of property subject to a reverter to litigate the validity of a re-entry pursuant to a reverter clause. Furthermore, the sensitivity of mortgagees and title companies to litigation concerning title is such that, during the pendency of any such litigation, it would be extremely unusual if an LPA which had repossessed title by re-entry under a reverter clause could sell the land to another redeveloper who could finance the development. The use of a reverter clause instead of a covenant to reconvey will not, therefore, obviate the delaying litigation which it is intended to prevent. What it does pose is a sword of Damocles over the head of a redeveloper, who in the case of a dispute differs with an LPA at his own risk. The risk will, of course, vary from jurisdiction to jurisdiction and from fact situation to fact situation. In practically all litigation one party is seeking to change the status quo, while the other seeks to retain it. If the rights of an LPA are sought to be enforced under a covenant to reconvey, the LPA is seeking to change the status quo and the redeveloper is resisting. If the LPA successfully re-enters and the redeveloper thereafter institutes litigation, the redeveloper is seeking to change the status quo and the LPA is resisting. The LPA's burden of litigating a covenant to reconvey is, therefore, greater than if it were defending in a case initiated by a reverter, and this is so both as to the burden of going forward and the risk of nonpersuasion, which can be heavy in an equity case. The party bearing the burden is also on the disadvantageous end of such equitable maxims as the "clean hands" doctrine. The final disadvantage is that if

the redeveloper has been wrong, reverter is final,[75] whereas if the court adjudicates him wrong in connection with an obligation to reconvey, it would be an unusual case in which a redeveloper who could make a showing of sincerity would not be given an opportunity to perform his contractual obligations as then interpreted by the court. It is obvious that in the case of a dispute a redeveloper whose land was subject to a reverter clause would feel a very strong compulsion to follow the dictates of the LPA in the course of redevelopment, regardless of what he considers his rights to be.

If the project has been well conceived, well planned, and well publicized by the LPA, the redeveloper, in the event of a dispute, will not only be fighting the agency in the courts, but will also be fighting a well-informed community. This fact is accentuated by many elements, including (1) the natural advantage which government has in litigation, (2) the redeveloper will be paying his own attorney's fees while the LPA can charge the attorney's fees to project costs (two-thirds payable by the federal government), and (3) during the pendency of litigation the redeveloper will be bearing other burdens and suffering the loss of prospective benefits. The redeveloper is placed under sufficient handicap without giving the LPA the additional advantages, and placing upon a redeveloper the positive disadvantages, of a reverter.

J. Antispeculation

The purpose of Title I is redevelopment, rehabilitation, and conservation of appropriate urban areas—not stimulation of trading in downtown real estate. What happens after completion of the urban renewal activity is irrelevant, but while clearance land is still undeveloped the URA and the LPAs must direct the disposition program toward the redevelopment of the land rather than speculation in undeveloped land. Accordingly, provisions against resale by a redeveloper prior to completion of the improvements were included in the 1957 Guide Form[76] and were further endorsed in the *Manual*.[77]

It is not surprising, however, that situations have developed in which it is beneficial to the redeveloper and at least not harmful to the urban renewal program for the redeveloper to sell a part of the property before it has been redeveloped. In order to avoid any possible element of speculation, the practice in such situations has hitherto been to require the redeveloper to make the sale without profit to himself. Since the opportunity to sell at a profit may very well have resulted from the enterprise and creative thinking of the redeveloper as well as the energy and capital expenditure which he proposes to make in completing redevelopment of the portion which he plans to retain, refusal to permit him to take his profit on a partial sale can be a bitter pill to swallow.

[75] 4 THOMPSON, *op. cit. supra* note 66, § 2186 provides that in a reverter ". . . the estate reverts at once upon the occurrence of the event by which it is limited."

[76] 1957 GUIDE FORM H-6209.

[77] URBAN RENEWAL MANUAL pt. 14, ch. 1, § 1, at 3.

The intention of Title I is also to insure redevelopment and to discourage redevelopers who would rather deal in urban renewal futures than in construction.[78] There is nothing wrong with the redeveloper making a profit on a part of the project land, provided that his transaction does not interfere with realization of the purposes described. Indeed, there may well be circumstances in which it has been advantageous to the LPA for the redeveloper to sell a tract of land which the redeveloper can advantageously split. If he is permitted freely to sell a part of the area, smaller tracts will be made available for redevelopment by local people, who were not in a position to bid on the larger tract, and at the same time this will assist redevelopment by adding the resources of another redeveloper to those of the original redeveloper and returning to the latter a portion of the capital that he paid out in order to make the purchase.

If a redeveloper were permitted to sell one per cent of the project land, no one would think of accusing him of undertaking the obligation to redevelop the ninety-nine per cent in order to speculate in the one per cent, especially if the disposition contract did not relieve him of responsibility for the one per cent even after sale. On the other hand, if he were permitted to sell ninety-nine per cent of the project land freely, even though he had to retain one per cent and responsibility for the other ninety-nine per cent, it is not difficult to foresee the possibility of land speculation entering into the program. Somewhere between these two extremes there is a line on one side of which speculation lurks. Just where this line is, only experience can tell. As a beginning, it seems reasonable that no one would buy and assume primary responsibility for redeveloping seventy-five per cent of a project area in order to sell twenty-five per cent. In view of the advantages that would accrue to the program from the introduction of some freedom in this area, it would seem reasonable to amend the regulations and the Guide Form in order to permit an unrestricted disposition of up to twenty-five per cent in area of the project land, subject, of course, to all of the restrictions in the original contract and deed and without releasing the original redeveloper of contractual responsibility for performance in accordance with the original disposition documents. A provision to this effect has been included in the suggested form of disposition contract which is appended to this article. Experience will in time tell whether this percentage can or should be enlarged or reduced.

K. Post Disposition Developments

The disposition documents usually include provisions, both express and implied, which may call for a change in price or alter performance of the contractual obligations of the parties in the event of certain developments occurring after the delivery. Wherever possible, the parties should anticipate developments which will justify a change in the position of the parties, and when such developments do occur it is entirely proper for either party or both to follow up his contract advantage.

[78] Sec. 105(b) of the Housing Act of 1949, as amended, 73 Stat. 673, 42 U.S.C.A. § 1455(b) (Supp. 1959).

For example, the uses specified in the plan and referred to in the contract and deed have great influence on the price. If the plan is amended to permit a more intensified use of the property by the redeveloper and such use is one which in the first instance would have rendered the property significantly more valuable, the change in use will be accompanied by a renegotiated price giving the LPA the benefit of the additional value created by the change in use.

If the effect of the changed or intensified use upon value is either debatable or insignificant, there seems little reason to re-examine the sales price. It is generally agreed as a legal proposition that once redevelopment has been completed it is difficult to rationalize a renegotiation of sales price because of an intensified or changed use. However, the fact that the urban renewal plan itself extends in time far beyond the completion of the redevelopment gives rise to a point of view that the LPA should be able to renegotiate the purchase price throughout the life of the plan. In terms of dollars and cents, the value of such an ability to renegotiate seems small in comparison to the dampening effect which a restriction has upon our traditional freedom in dealing with real estate, subject only to the control of use which is necessary to protect the right of the public. The official concern for renegotiation of price lessens the farther south and farther west one travels from the North Atlantic states.[79]

Another problem arises in connection with use of the property between the date of acquisition and the completion of redevelopment. Such interim use has become a sensitive subject in some areas where it seemed that redevelopment was being delayed because of the financial success of interim uses such as parking.

When the land use provisions in the urban renewal plan are not broad enough to include a specific interim or temporary use, it is probably illegal to use the property for such purposes without amending the plan. Deep concern has been expressed that attractive interim uses may delay redevelopment, and consequently some Regional Offices are of the opinion that in order to avoid possible delay in redevelopment, interim uses should be strictly forbidden.[80] However, the policy which has been followed by URA is expressed in the general feeling of the Regional Offices that, if the interim use is minor, if it does not visibly delay redevelopment, and if it is not objectionable to surrounding property owners, the Regional Office will try to adjust sympathetically to the interim use and will not require any participation in the income unless it is substantial. As a precaution to prevent undue delay, provision should be made for termination of the allowed interim use upon short notice.

There have been some instances in which the LPA in such matters as architectural design and construction materials has increased its demands upon the redeveloper after the bargain has been struck. The redeveloper is particularly susceptible to

[79] Regional Counsel Meeting of the Housing and Home Finance Agency, held in Washington, D.C., on July 25 and 26, 1960.

[80] *Ibid.*

such pressure when the disposition is in the form of a lease rather than a sale. Obviously, this should be avoided.

If the scope of uses in an area is not broad enough and the need for, or the possibility of, change in use can be foreseen in the immediate future, it may be beneficial to make provision in the plan for alternate use of the property. For example, if in a public use area which designates a highway or school, no commitment has been received from the highway department or school board at the time of execution of the plan, the LPA should provide for an appropriate alternate use, thereby avoiding the necessity of amending the plan. This procedure would thereby eliminate another problem that often arises subsequent to disposition.

IV

THE LAND BANK CONCEPT

Proposals for the establishment through the urban renewal program of "land banks" in our metropolitan areas are being advanced by some of those active in the program. Lawrence M. Cox, Executive Director of the Norfolk Redevelopment and Housing Authority, made such a proposal in an unrecorded speech in the spring of this year, and shortly afterwards, at the conference held by the American Society of Planning Officials (ASPO),[81] again made the proposal in a speech which was given written distribution. The annual conference of NAHRO held in Detroit in October included in the program a discussion of "The Need to Establish a 'Land Bank.' "[82] The proposal has been the subject of discussion on other occasions.

Mr. Cox directs his proposal principally toward downtown areas. He is concerned lest the necessity for programming completion of a project in five to eight years after it passes the planning stage and enters execution will result in wasteful, extravagant, hurried, and piecemeal development inadequate for the city's future. In order to develop cleared downtown land to its greatest potential, he counsels delay where it is not feasible to develop central city land immediately to its full potential. During the delay, a "land bank" would take title, pending ultimate sale. The proceeds upon sale, after payment of the purchase price of the land and of carrying charges, would be returned to the federal and local governments on a two-thirds, one-third basis.

Obviously, this is a proposal made in all seriousness. Equally obviously, so far as the proposal has developed to date, it is not a scheme to promote and subsidize from the federal treasury permanent public ownership of downtown real estate. And while it may have immediate value for rationalizing a solution to rare situations in which an LPA may find itself with property it cannot sell, the proposal is not advanced as a distress program, but rather as a long-term program.

The major premise of this proposal is the necessity for time in which to pierce

[81] American Society of Planning Officials, National Planning Conference, held at Miami Beach, Fla., on May 22-26, 1960.

[82] The subject was subsumed under a general discussion entitled "Bold Thought a 'Must' for the Future of Urban Renewal."

the veil of the future and make plans consonant with the revelation. Technical skills relating to land use design have today reached the point where it matters little whether the land has been cleared in advance of planning, so that existing improvements need not be demolished before replacement planning can proceed. On the other hand, if there is a central city area of any size in the United States where the buildings contribute nothing to the tax rolls, it is unique. Usually in the central city areas, even those structures bad enough to be the subject of a clearance project contribute significantly to local tax revenues. The demolition of these structures not only takes the value off of the tax roll, but also burdens the tax structure with payment of the city's share of the clearance cost, together with interest on money borrowed in order to accomplish this. Although the city is not completely indemnified for its loss of tax revenue, as part of the urban renewal program, the city receives a federal contribution for the land itself, which is being removed from the tax rolls.[83]

Analyzed in terms of planning future land use, the prudent course of action for the city is to plan first and undertake the execution of the urban renewal project only when it is apparent that the land can be advantageously put to use immediately upon completion of clearance. Therefore, the only situation which would justify creation of a "land bank" would be the one in which the project area was so bad that the city would be better off without it, even if nothing arose in its place.

Whatever may be said in the ordinary course of an urban renewal project about the public purpose to be served by clearing slum areas, even in the course of those which have been the subject of litigation there is inescapably present at every stage of consideration the fundamental intention to redevelop. If all construction in the United States were to stop tomorrow, it can be seriously questioned whether any significant amount of slums would hereafter be demolished.

Of course, the "land bank" proposal contemplates ultimate redevelopment. However, the very nature of the proposal prevents basing it upon any specific time limit for redevelopment. When we consider that eight years is regarded as a relatively short period, it is not unreasonable to suppose a delay in redevelopment of from fifteen to twenty-five years. Considering the increasing rate at which modern technology renders material things obsolete,[84] there must be many areas presently undergoing demolition where massive rehabilitation and enforcement of housing codes would be preferable to a delay of fifteen to twenty-five years in redevelopment.

The withdrawal from the redevelopment market of any substantial amount of cleared downtown real estate would certainly have many incidental but far-reaching

[83] Sec. 110(e) of the Housing Act of 1949, as amended, 73 Stat. 675, 42 U.S.C.A. § 1460(e) (Supp. 1959).

[84] Nixon, *Our Resolve is Running Strong*, Life, Aug. 29, 1960, p. 87. In describing the speed at which "our technology is surging ahead . . . ," Vice President Nixon stated: ". . . [E]ven the most sophisticated predictions can go sadly awry. For example, a report to the National Resources Committee in 1937 tried to anticipate 'the kinds of new inventions which may affect living and working conditions in America in the next . . . 25 years'—or by 1962. In this report, most of the major technological developments between 1937 and now were completely unforeseen—despite the fact that many of the nation's then leading scientists and engineers had been consulted in its preparation." *Id.* at 91.

effects difficult to anticipate. If circumstances presently dictate the clearance of downtown land and its use for parks, parking lots or other purposes not requiring structures, such uses may very well support an urban renewal project that will be considered executed when the new uses have been achieved. The "land bank" proposal is directed to properties not intended for any such planned use, but simply to be held unused or for interim uses pending determination of the proper future use. The lives and businesses of all who border on the "land bank" property would be immediately affected. The withholding of this land from development would in itself force other processes and activities in other directions. Surface transportation lines, which suffer enough when one side of a route is "dead," would suffer even more severely the effects of such clearance in central city areas.

If the cleared land can be put to immediate use, but in the judgment of some the use is not adequate, it can be legitimately asked whether there will ever be agreement as to the adequacy of a use proposed for land once taken out of circulation. Every residential custom builder knows that there never comes a time when the owner's wife cannot improve on the plans for her house. It makes no difference how many years an architect has reworked the plans; if Mr. and Mrs. Owner do not take off for the Bahamas during the interval between groundbreaking and landscaping, the plans will continue to be reworked until the interior decorator finally rings the bell on changes.

In a world where human curiosity is exceeded only by the vast fund of human ignorance, changes in our technology and our mode of urban living will make it difficult for planners looking for the ultimate to find a stopping point, while on the other hand, they will make the process of urban renewal an endless cycle for those things even the wisest of us build.

If this analysis is sound, the possibilities for use of the "land bank" scheme are limited. The proposals to date seem to start with cleared land, rather than with the area as it stands prior to urban renewal. If the proposal has any merit, it would seem to be only in those situations where at the time a program is started, circumstances justify the consequences of clearing a downtown area for no purpose at all other than to hold it for a future still unplanned use.

V

FHA ACQUIESCENCE

The 1957 Guide Form was cleared by FHA before it was approved and published. It is reasonable to assume that any future Guide Form published by the Urban Renewal Administration will be cleared by FHA beforehand. The proposed form of disposition contract published as an appendix to this article has been reviewed informally with FHA officials, and there is little doubt that it would be more enthusiastically received than the existing form, were it adopted.

Even though FHA has reviewed the 1957 Guide Form and will review any form of proposed disposition contract submitted by a proposed redeveloper in good faith,

the position of FHA in the disposition process has not been completely understood. The misunderstanding has even extended to some of the FHA offices.

There is no legal requirement that FHA approve the disposition contract. However, since FHA mortgage insurance will probably be needed in any residential project of consequence, no well advised redeveloper will sign a contract for the purchase of urban renewal project land which will put him in a position where he cannot obtain FHA mortgage insurance. Since urban renewal disposition documents contain controls on the ownership and use of the land not found in the usual real estate situation with which FHA is accustomed to deal, this means that as a practical matter FHA must approve of the disposition contract before a redeveloper will sign it.

FHA has no interest in putting provisions of its own into the contract. The only interest that FHA has is in preventing imposition of limitations or controls that will prevent the redeveloper from economically developing the property or that, in the course of its dealings with the redeveloper, will prevent FHA from effectively imposing its own requirements (economic in purpose) on the redeveloper and the property. Confusion has resulted because some people have thought that FHA was interested in putting provisions in the disposition contract. FHA will work out its own contractual arrangement with the redeveloper and his mortgagee, provided that the restrictions and limitations in the disposition contract do not get in the way. Therefore, the shorter and less complicated the disposition contract, the sweeter it is to FHA.

It has been suggested that a revised and shorter Guide Form adopted with FHA approval and widely publicized would be most helpful in remedying the present situation. Use by LPAs and redevelopers of such a Guide Form would eliminate a great deal of the confusion, and FHA's approval for insurance would follow without delay.[85]

VI

CONCLUSION

Many of the same redevelopers, contractors, and mortgagees are participating throughout the nation in some or all phases of redevelopment, and at least one and sometimes all of several governmental agencies—the Federal Housing Administration, the Federal National Mortgage Association, and the Public Housing Administration—are involved to some extent in almost every residential urban renewal redevelopment of any size. Indication of further involvements is reflected by the fact

[85] Memorandum from Edward H. Coulter, Chief, Urban Renewal Section, Legal Division, FHA, to A. M. Prothro, Deputy General Counsel, Federal Housing Administration, September 29, 1960. In addition to the material contained in this memorandum, Mr. Coulter further stated: ". . . that is, publicize FHA requirements as to what FHA will or will not approve, and then leave the responsibility of meeting those requirements with Local Agencies and Redevelopers, where it in fact belongs. If, at initial closing, the requirements are shown to have been satisfied, insurance will follow. If such showing has not been made, then insurance will be denied."

that the Small Business Administration is now being coaxed into the picture.[86] Thus, the disposition of urban renewal real estate is becoming an area of the law which might very well justify the attention of the Commissioners on Uniform Laws, to the end that a Uniform Code of Disposition of Urban Renewal Real Estate be considered by the legislatures of the various jurisdictions.

On the federal level it appears clear that substantial improvements and simplifications can be initiated in the disposition process—although any new form that may be developed for disposing of urban renewal project real estate will be no more the permanent answer to all problems than was the 1957 form.[87] The prompt adoption of a simplified guide form for disposition contracts will not only stimulate the disposition process all over the nation and help avoid future problems of over-inventory in vacant project lands; but it will also serve as the precedent for its own re-examination and revision when in the future the always-changing circumstances may require.

APPENDIX

PROPOSED GUIDE FORM CONTRACT FOR LAND DISPOSITION*

I. *Background and Definitions of the Agreement*

This agreement relates to the following:

(a) Parties:

1. , herein sometimes called the "Agency."
2. , herein sometimes called the "Redeveloper."

(b) Documents:

1. An Urban Renewal Plan and all amendments thereto, herein sometimes called the "Plan," [1] which was approved by the City of , herein sometimes called "City," by [2] and adopted on the day of , 19 .

[86] House Comm. on Banking and Currency, *Housing Act of 1960*, H.R. REP. No. 1924, 86th Cong., 2d Sess. 46 (1960), indicates that § 802 of H.R. 12603 would amend § 7 of the Small Business Act to authorize the Small Business Administration to make loans to small business concerns which have been displaced from urban renewal areas in order to assist them in re-establishing their businesses in new locations.

[87] 1957 GUIDE FORM H-6209.

* This Agreement shall be altered to comply with conditions and requirements of state and local law, practice, and terminology.

[1] Include date and place of filing or recording of Plan.

[2] Cite Ordinance or Resolution which was adopted by the City.

2. Provisions of the Plan which specify the Land Use Provisions, Building Requirements, and Redeveloper's obligations, herein sometimes called the "Standards" which have been collected in an instrument, herein sometimes called "Declaration of Restrictions" which was recorded in .....[3]

(c) Real Estate:

1. The area which is being redeveloped and is designated in the Plan, herein sometimes called the "Project Area."

2. The description of the property to be purchased by the Redeveloper is contained in Exhibit A, which is attached hereto and made a part hereof, herein sometimes called the "Property."

(d) Selling Price:

1. $....., herein sometimes called the "Price."

(e) Security Deposit:

1. $....., herein sometimes called the "Deposit."

(f) Other Definitions:

1. Improvements: Improvements to be constructed upon the Property by the Redeveloper, herein sometimes called the "Improvements."

2. Deed: The instrument of conveyance of the Property, herein sometimes called the "Deed."

II. *Main Body of the Agreement*

A. In connection with the Deed, the Agency and the Redeveloper agree to the following:

1. Upon payment by the Redeveloper of the Price, which shall include the Deposit,[4] the Agency will convey the Property by general warranty deed to the Redeveloper.[5]

a. The Deed shall contain agreements and covenants running with the land that the Redeveloper shall:

(1) Comply with the Standards and the Declaration of Restrictions for the duration of the Plan;[6]

[3] Cite complete recording information, including date and place of filing. In the event that such a document has been filed and has been given another title, the appropriate title should be indicated in the reference. In addition to filing or recording the Plan, in order to avoid some title complications, it is desirable to abstract and file of record the provisions in the Plan in connection with land use, building requirements and other obligations of the Redeveloper.

[4] If the Deposit is not included in the Price, this provision may be altered accordingly. It may be desirable to include the date on which the deposit was paid.

[5] In order to protect the title to the property and maintain the chain of warranties, it is advisable and desirable to convey by general warranty deed. However, this provision should be altered in the event that state or local law does not authorize conveyance by general warranty deed, in which case conveyance may be by special warranty deed or quitclaim deed.

Specify any other instrument which may contain restrictions affecting the Property.

Provision may be made for division of the Property into several parts or parcels so that there may be separate conveyances, separate mortgage financing, take downs in stages, etc.

[6] It may be preferable to spell out the duration of the Plan in terms of years.

(2) Not effect or execute any covenant agreement, lease, conveyance, or other instrument restricting the sale, lease, or occupancy upon the basis of race, religion, color or national origin, which covenant shall not be limited as to time.

b. The provisions and covenants of this Agreement shall not be merged and shall survive delivery of the Deed.

B. The Agency agrees to the following:

1. The Agency will deliver the Deed and possession of the Property to the Redeveloper on the ..... day of ..... 19 . . , or on such earlier date as shall be mutually agreeable to the Redeveloper and the Agency.

2. The Agency shall prepare the Property for redevelopment in accordance with the Plan.[7]

3. After completion of construction of the Improvements in accordance with the Declaration of Restrictions, the Agency shall promptly furnish the Redeveloper with an appropriate certification of such completion. Completion of construction of the Improvements in accordance with the plans and specifications which have been approved by the agency under II(C)(2)(a) hereof shall be conclusive evidence of compliance by the Redeveloper.

4. In the event that the Redeveloper, after diligent efforts on his part, is unable to obtain mortgage financing for the Improvements on terms that would generally be considered satisfactory by builders and contractors, the Redeveloper, at

[7] If the Plan does not sufficiently identify the extent of preparation of the Property for redevelopment, further provisions should be added. The following provisions which are suggested to indicate the type of requirements that may be considered in defining preparation of the Property, should be altered based upon the undertakings of the Agency and the Redeveloper.

Such preparation by the Agency may include:

a. The demolition and removal to grade of all existing buildings, structures, and obstructions on the Property, including the removal of any debris resulting from such demolition;

b. The removal (by the Agency or by appropriate public bodies or public utility companies) of all paving (including curbs and gutters), sidewalks, and utility lines, installations, facilities, and related equipment, within or on the Property which are to be eliminated or removed pursuant to the Plan;

c. Such filling and grading and leveling of the land (but not including top soil or landscaping) as shall be necessary to make it ready for construction of the Improvements to be made thereon by the Redeveloper (it being intended that such filling, grading, and leveling conform generally to the respective surface elevations of the land prior to the demolition of the buildings and structures thereon).

All expenses (including current taxes, if any) relating to buildings or structures demolished or to be demolished shall be borne by, and any income or salvage received from such buildings or structures shall belong to, the Agency.

d. The paving and improving (by the Agency itself or by the City) in accordance with the usual technical specifications and standards of the City, of such streets (including the installation of gutters, curbs, and catchbasins and the removal of trees and shrubs), and the street lighting and sidewalks in such public rights-of-way, as are to be provided pursuant to the Plan;

e. The installation and relocation (by the Agency itself or by appropriate public bodies or public utility companies) of such sewers, drains, water and gas distribution lines, and electric, telephone, and telegraph installations (exclusive in each case of house or building service lines), as are to be installed or relocated pursuant to the Plan; and

f. The vacating of present streets, alleys, other public rights-of-way, and plats, and the dedication of new streets, alleys, and other public rights-of-way, in the Project Area, and the rezoning of such Area, in accordance with the Plan: *Provided*, That the Redeveloper will, upon request by the Agency, subscribe to and join with the Agency in any petitions and proceedings required for such vacations, dedications, and rezoning.

his option, may terminate this Agreement and the Agency shall refund to the Redeveloper, without interest, all payments on account of the Price, including the Deposit.

C. The Redeveloper agrees to the following:

1. The Redeveloper shall pay the Price for the Property to the Agency and upon conveyance of the Property, the Redeveloper agrees to pay for the Federal Documentary Tax Stamps.

2. The Redeveloper shall construct the Improvements in accordance with the Standards and the Declaration of Restrictions.[8]

a. In order to verify that the Improvements will be in conformity with the Standards, the Redeveloper agrees to submit to the Agency within ..... days for its approval, plans and specifications for the Improvements.[9]

b. The Redeveloper agrees to begin construction of the Improvements within ..... from date of the Deed and to pursue construction of the Improvements with reasonable diligence and to complete said Improvements within ..... from date of the Deed: *Provided*, however, that if the Federal Housing Administration has insured a mortgage to finance any of the Improvements, then the Improvements shall be completed within the time specified in the Building Loan Agreement approved by the Federal Housing Administration but that, in any event, the completion time shall be within four years from the date of execution of the Building Loan Agreement.

3. Prior to completion of the Improvements, the Agency shall have the right and the privilege of reasonable inspection of the books and records of the Redeveloper, including all information concerning the stockholders, their respective holdings, and the holdings of any other parties having beneficial interest in such stock.

D. The Agency and the Redeveloper do hereby agree to the following:

1. Prior to the completion of construction of the Improvements, except upon testate or intestate succession, there shall be no change totalling more than forty-nine per cent (49%)[10] in the identity or proportionate interest of the original ownership of the Redeveloper Corporation by any means, without the prior approval of the Agency. The Redeveloper and the officers signing on its behalf represent that it has the authority of all of its stockholders to agree to this provision on their behalf.[11]

2. Prior to completion of the construction of the Improvements, except upon

[8] As provided under note 3 *supra*, other appropriate documents may be named.

[9] The Agency should not concern itself with detailed plans and specifications except to the extent necessary to be assured that they are in conformity with the Standards.

[10] It is important that control of the Corporation remain in a majority of the original stock interests. State law and the By-Laws of the Corporation should be checked carefully and this percentage figure should be altered and, if necessary, lowered to a figure which will prevent loss of control of the majority of the original stockholders of the Corporation.

For example, this figure should be lowered to thirty-three per cent (33%) in the event that the state law and the By-Laws of the Corporation provide for amendment by a two-thirds (⅔) vote of the stockholders.

[11] In case of stock listed on a national exchange, this entire paragraph should be omitted.

testate or intestate succession, there shall be no transfer, assignment, conveyance, or lease (or contract or agreement of same) that shall aggregate more than twenty-five per cent (25%) of the total surface area of the Property, without the prior written approval of the Agency, and that any such transfer, assignment, conveyance, or lease (or contract or agreement of same) shall be made subject to all of the terms and provisions of this Agreement,[12] and the Redeveloper shall also remain liable and shall not be released from his obligations under this Agreement.

This provision shall not prevent the Redeveloper from mortgaging the Property in order to obtain financing necessary for making the Improvements pursuant to this Agreement.

3. Any and all taxes duly assessed against the Property,[13] including but not limited to Real Estate taxes, shall be apportioned between the Agency and the Redeveloper, as of the date of conveyance, unless otherwise provided.[14]

4. The Agency, the Redeveloper, and their authorized representatives shall have access to the Property at reasonable times to carry out the purposes of this Agreement.

5. Unless otherwise provided, in the event of any default or breach of this Agreement, the aggrieved party shall furnish written notice to the party in default. In the event that the default or breach shall not be cured or remedied within ..... days,[15] the aggrieved party shall have the option to:

a. Institute proceedings, at law or in equity, to cure or remedy such default or breach.

b. In the event that the aggrieved party is the Agency, and:

(1) Such default or breach occurs prior to conveyance of the Property to the Redeveloper, then any rights of the Redeveloper in this Agreement may be terminated by the Agency, and the Agency may apply the Deposit on account of any damage suffered.

(2) Such default or breach occurs subsequent to conveyance of any of the Property to the Redeveloper, and prior to completion of the Improvements, the Redeveloper, within ..... days of written notice by the Agency, shall reconvey the Property to the Agency by general warranty deed,[16] without charge or expense to the Agency, and the land and any Improvements thereon, free and clear of all liens and incumbrances, except liens or incumbrances resulting from bona fide financing of the construction of the Improvements and from mechanics' or materialmen's liens resulting from such construction.

[12] State and local law may require the written approval of the Agency in all cases. The more stringent statutory provision will control.

[13] Whether the reference is to tax liens, tax assessments, or other language will depend upon local law and custom.

[14] It may be necessary and desirable to itemize and apportion other costs and expenses such as special assessments, title insurance, state transfer tax, recording fees, etc. on the basis of state and local law or custom.

[15] Specify appropriate time limitation.

[16] In order to protect the title to the Property and maintain the chain of warranties, it is advisable to convey by general warranty deed. However, if conveyance from the Agency to the Redeveloper was not by general warranty deed, it may be desirable to provide that reconveyance from the Redeveloper to the Agency shall be by the same type of deed as such original conveyance.

(a) In the event that the Agency reacquires title to any of the Property the Agency shall use reasonable efforts to dispose of the Property and any Improvements in accordance with the Plan. Upon resale, the Agency shall retain sufficient proceeds to cover expenditures, including liquidation of liens, made by the Agency in connection with the management and resale of the Property. The balance then remaining shall be paid to the Redeveloper only to the extent of the sums paid by the Redeveloper for the Price of the Property and construction of the Improvements, deducting therefrom any gains and income which the Redeveloper has realized or may realize. Any balance remaining after such payment to the Redeveloper shall be retained by the Agency.

c. In the event that the aggrieved party is the Redeveloper and such default or breach occurs prior to conveyance of the Property to the Redeveloper, then this Agreement may be cancelled and terminated and in this event, the Redeveloper shall be entitled to a return of all payments on account of Price including the Deposit and neither the Agency nor the Redeveloper shall have any further rights against or liability to the other under this Agreement.

6. In the event of enforced delay due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to Acts of God, or of the public enemy, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors due to such causes, neither the Agency nor the Redeveloper shall be considered in breach of or in default of this Agreement, and the performance dates specified in this Agreement may be extended for the period of the enforced delay; *Provided,* That the party seeking such extension shall, within ..... days after the beginning of such enforced delay, have furnished written notice to the other party.

7. The exercise of any right or remedy provided for in this Agreement shall not preclude the exercise of any other rights or remedies provided for under this Agreement.

8. Any notice or communication provided for under this Agreement shall be sufficient if made by registered mail:

a. To the Redeveloper at .....

b. To the Agency at .....

9. Each and every reference to parties named in this Agreement shall also refer to and include all assigns, transferees, and successors in interest of such parties as if they were described in this Agreement.

10. All of the provisions, covenants, conditions, and obligations of this Agreement shall be binding upon and shall extend to all of the successors, assigns, transferees, and any mortgagees to the extent of their right, title, and interest in the Property, who may succeed to the interest of the Redeveloper of all or any part of the right, title, and interest of the parties to this Agreement, unless otherwise provided.

IN WITNESS WHEREOF this Agreement has been duly executed in ..... originals on the ..... day of ....., 19....[17]

(SEAL)

Attest: .....

..... By: .....

....

(SEAL)

Attest: .....

..... By: .....

.. ..

SUGGESTED FORM OF DECLARATION OF RESTRICTIONS

..... Project

City of .....

.....[1]

(herein sometimes called the "Agency")

..... day of ....., 19....[2]

I. The following land use provisions, building requirements, and redevelopers' obligations have been excerpted from an Urban Renewal Plan, ...

.....[3]

which was approved by the City of .....

by .....[4] adopted on the .....

day of ....., 19....

II. *Area to which Applicable.* The following controls and regulations shall apply to the area which is being redeveloped, herein sometimes called the "Project Area," which is described as follows:[5]

[17] The Agreement should be properly acknowledged.

[1] Indicate appropriate name of the Local Public Agency.

[2] Date should coincide with date of approval of the Urban Renewal Plan.

[3] Include date and place of filing or recording of Plan.

[4] Cite Ordinance or Resolution which was adopted by the City.

[5] Describe Project Area by street and other boundaries. If this is not feasible, then describe Project Area by metes and bounds. If the Land Use Map can be recorded with the Declaration of Restrictions, then you may want to add language to the following effect: "as indicated on the Land Use Map which is identified as Exhibit 1, which is attached hereto and made a part hereof."

III. *How the Land is to be Used.*

A. Each area, herein sometimes called "Use Area," identified on the Land Use Map, which is .....,[6] may be used for the purposes and in the manner indicated on the Land Use Map and as provided in this Declaration.

B. The following controls and regulations shall apply to the use and development of the land and improvements for the Project Area.

C. No building or structure shall be erected, reconstructed, enlarged, moved, altered, or improved for any use other than that which is permitted in the applicable designated Use Area, nor shall any building or structure be erected, reconstructed, enlarged, moved, altered, or improved in such a manner as to violate any of the regulations and controls specified herein.

IV. *Regulations and Controls Applying to Specific Use Area.*

Each Use Area shall be used only for the following uses specified for each area and shall conform to the following applicable requirements:

A. Two-Family Residential Use Areas.

1. Use Regulations. A building or premises shall be used only for the following purposes:
   (a) One-family dwellings.
   (b) Two-family dwellings.
   (c) Municipal recreational facilities for the above uses.
2. Area Regulations
   (a) Minimum lot area required shall be ..... sq. ft.
   (b) Minimum permitted lot dimensions shall be ..... feet in width and ..... feet in depth.
   (c) Minimum yard dimensions shall be as follows:
      (1) Front yard ..... ft.
      (2) Rear yard ..... ft.
      (3) Side yards ..... ft. each.
   (d) No building shall cover more than ..... % of the area of the lot.
3. Height Regulations.
   The maximum permitted building height shall be ..... stories having a height of not more than ..... feet.

B. Multifamily Residential Area.[7]

1. Use Regulations.
   A building or premises shall be used only for the following purposes:
   (a) Apartment or apartment hotel.[8]

[6] If the Land Use Map cannot be recorded with the Declaration of Restrictions, it should be filed with the Map Records. Indicate whether the Land Use Map is attached to the Declaration of Restrictions or appropriate recording information in the Map Records, including date and place of recordation.

[7] It may be preferable to designate this Use Area as High-Rise Apartments.

[8] It may be desirable to designate Multiple-Dwelling.

(b) Church or Temple.

(c) The ..... of a multistory building may be used for accessory uses primarily for the convenience of the tenants, including but not limited to recreation rooms, nursery schools, day-care centers.

2. Parking Regulations.

Off-street parking of not less than ..... sq. ft. per space, exclusive of adequate access shall be provided within each parcel as follows:

(a) Residential use area— ..... parking spaces for ..... dwelling units.

(b) Church use area— ..... parking space for each ..... seats in the main auditorium.

3. Height Regulations.

The maximum permitted building height shall be ..... stories having a maximum height of ..... feet.

4. Area Regulations.

(a) Principal buildings shall not cover more than ..... % of the lot.

(b) Every lot shall have a minimum frontage of ..... ft.

(c) The minimum part dimensions shall be as follows:

(1) Front yard ..... ft.

(2) Rear yard ..... ft.

(3) Side yards ..... ft. each.

5. Density Regulations.

The maximum permissible dwelling units per net acre shall not exceed .....

6. Residential Floor Area Regulations.

A building shall have the following minimum floor area for each unit, exclusive of hall and service area:

One-bedroom apartment— ..... sq. ft.[9]

7. Recreational Area Regulations.

For each dwelling unit with an area in excess of ..... sq. ft., there shall be provided an outdoor recreation space with an area of not less than ..... sq. ft.

C. Commercial Area.

1. Use Regulations.

A building or premises shall be used only for the following purposes:

(a) Retail store, including incidental manufacturing or processing of goods or products for retail sale on the premises only;

(b) Personal and business service facility, including but not limited to barber shop, beauty shop, photographer, tailor shop;

(c) Theatre and private club;

[9] Indicate appropriate square footage requirements for the various type and size of apartment units.

(d) Food service facility, including but not limited to restaurant, bakery;
(e) Office, including but not limited to business, professional, clinic, bank, public utility or government use;
(f) Storage garage for vehicles and goods;
(g) Accessory building or use customarily incident to the above uses;
(h) Gasoline service station, subject to the following regulations:
(1) The storage of material, stock, equipment, and auto repairs and servicing shall be permitted only within an enclosed building;
(2) Gas pumps shall be located a minimum of ..... feet from any street line and a minimum of ..... feet from any property line (other than the street line);
(3) No outdoor display of vehicle parts and used and dismantled vehicles shall be allowed.

2. Parking and Loading Regulations.
(a) Off-street parking of not less than ..... sq. ft. per space, exclusive of adequate access, shall be provided for each ..... sq. ft. of ground floor area, as follows:
(1) Office use—one parking space for each ..... sq. ft. of floor area,
(2) All other uses—one parking space for each ..... sq. ft. of floor area.
(b) Off-street truck loading facilities—one loading space, of not less than ..... sq. ft., for each ..... sq. ft. of gross floor area.

3. Height Regulations.
No building shall exceed ..... stories or ..... feet in height.

4. Area Regulations
(a) No building or group of buildings shall cover more than ..... % of the area of any such lot.
(b) The minimum required yard dimensions shall be as follows:
(1) Front yard .
(2) Rear yard—no requirement, except that there shall be a minimum required space of ..... feet if the lot abuts or adjoins residential property.
(3) Two side yeards—one on each side of the building, having a combined width of not less than ..... feet, provided that one side yard shall be not less than ..... feet in width.

5. Sign Regulations.
(a) Signs shall be permitted only under the following regulations:
(1) Signs applied to the wall of any building fronting on a street shall not have an area in square feet which is greater than twice the frontage of the building in lineal feet, nor shall such sign project more than ..... inches from the wall.

(b) No billboard and nonaccessory signs shall be permitted and the sign may only advertise activities conducted, goods or services sold on the premises.

(c) No sign shall project over the building lot line.

(d) No sign shall be illuminated unless the source of light is steady and shielded.

(e) No sign shall be greater than ..... feet above the level of the curb.

D. Industrial Area.

1. Use Regulations.

A building or premises shall be used only for the following purposes:

(a) Any manufacturing, processing, warehousing, wholesaling, or distributor activity, which is not objectionable to the adjacent property because of the emission of dust, odors, smoke, gas, or noise.

(b) Repair shop.

(c) Truck terminal.

(d) Retail store or food service establishment, primarily serving the industrial area.

(e) Gasoline service station.

2. Parking and Loading Regulations.

(a) Off-street parking of not less than ..... sq. ft. per space, exclusive of adequate access, shall be provided as follows:

(1) Storage establishments—one space for each ..... sq. ft. of gross building floor area.

(2) All other uses—one space for each ..... sq. ft. of gross building floor area on the lot.

(b) Off-street truck loading facilities—one loading space, of not less than ..... sq. ft. for each ..... sq. ft. of gross floor area.

3. Height Regulations.

No building shall exceed ..... stories or ..... feet in height.

4. Area Regulations.

(a) No building or group of buildings shall cover more than ..... % of the area of any such lot.

(b) Minimum required yard dimensions shall be as follows:

(1) Front yard ..... feet.

(2) Rear yard and side yards—no requirement except that there shall be a minimum required space of ..... feet if the lot abuts or adjoins residential property or a street bordering residential property.

5. Other Regulations.

(a) All uses including storage of material and equipment shall be carried on in fully enclosed buildings.

(b) Only oil, gas, or electricity shall be used as fuel.

(c) No smoke, gas, dust, fumes, odors, radiation, or any other atmospheric or water pollutant shall be disseminated beyond .....

(d) Uses which constitute a fire explosion or other physical hazard or which would cause the discharge of harmful waste shall be prohibited.

(e) If a lot abuts or adjoins residential property or a street bordering residential property .....[10] at least ..... feet in height shall be .....[11] to screen off the industrial property.

E. Institutional and Public Use Areas.

1. Use Regulations.

A building or premises shall be used only for the following purposes:

(a) Schools and colleges, both public and private.

(b) Parks, playgrounds and accessory uses.

(c) Other public and semi-public uses.

2. Area Regulations.

(a) No building or group of buildings shall cover more than .....% of the area of any such lot.

(b) The minimum required yard dimensions shall be as follows:

(1) Front yard ..... sq. ft.

(2) Rear yard and side yards—no requirement except that there shall be a minimum required space of ..... feet if the lot abuts or adjoins residential property.

3. Parking and Loading Regulations.

Adequate off-street parking and loading facilities shall be provided.

4. Alternate Use Regulations.

In the event that any parcel of land designated for Institutional and Public Use shall not be used in such fashion or such use is abandoned prior to the expiration of the period of use specified under section VI hereof, then that parcel of land shall be subject to the regulations and controls applying to the Use Area in which it is located.[12]

V. *Nondiscrimination.*

Neither the original purchaser nor lessee nor any successor in interest of any of the Project Area shall effect or execute any covenant, agreement, lease,

[10] It may be desirable to provide for a masonry wall, shrubs, evergreen trees, etc.

[11] Indicate whether the appropriate screening is to be constructed, planted, maintained, etc.

[12] For example, a parcel of land which is situated within a Commercial Use Area shall be subject to the regulations and controls applicable to a Commercial Use Area which are contained in section IV(C) of the Declaration of Restrictions.

conveyance, or other instrument restricting the sale, lease, occupancy, or use of any such property upon the basis of race, religion, color, or national origin.

VI. *Duration.*

This instrument shall be in force and effect and the restrictions herein shall be enforceable against the property in the Project Area until .....,[13] at which time said restrictions shall automatically terminate.

VII. *Enforcement.*

The Agency shall be a beneficiary of all the restrictions, regulations, and controls in this Declaration and shall be entitled to represent and act on behalf of the City and community in enforcing the restrictions, regulations, and controls provided for herein.

VIII. *Amendment.*

The provisions of this instrument may be modified or changed only by formal written amendment duly approved and adopted by .....[14] or by any Public Authority duly designated by the governing body of the City to act in such capacity.[15]

[13] The applicable period of time should coincide with the provision in the Urban Renewal Plan. It may be desirable to indicate the duration by the date of expiration rather than the length of time.

[14] Indicate appropriate name of the Local Public Agency.

[15] Provision may be included in the Urban Renewal Plan that in the event that an Amendment to the Plan will adversely affect any property within the Project Area, the written consent of the owner of such property shall also be required.

THE FEDERAL URBAN RENEWAL PROGRAM: A TEN-YEAR CRITIQUE

RICHARD H. LEACH*

Urban renewal as a federal program began only in 1949 and has been emphasized only since 1954. It is important to keep these dates in mind when beginning an appraisal of the program. All new governmental processes require time for public support to be built up and public understanding gained, as well as for problems of operation to be worked out. Perhaps it is too soon to judge urban renewal. It should also be remembered that both the Congresses which have provided for federal assistance in urban redevelopment and the state legislatures which have passed acts enabling local agencies to launch urban renewal projects are, if not actually dominated by rural constituencies, bound by the rural traditions and orientation of American political life. Because urban renewal is new and because it demands for the first time concentrated attention on urban areas, it has been subjected to repeated attack. Every extension has been resisted; and there is still a hearty opposition to the whole idea. Under these conditions, an objective appraisal is seldom encountered.

Granted all this, it seems very possible that history may in the end demonstrate that the Housing Act of 1949,[1] which launched urban renewal on its way, is the most significant piece of legislation placed on the federal statute books since World War II. Not only was federal involvement authorized in an activity which "touches practically every phase of the Nation's economy,"[2] and thus of its very life, but, what is more, the federal government was enlisted for the duration in the battle for "the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family. . . ."[3] Perhaps no one foresaw in 1949 that the battle would be such a long one, for, despite the federal government's participation for ten years in the fight against it, the cancer of urban blight has spread since 1949. The life of urban America is still far from being saved. A recent analysis in Boston, for example, concluded that while

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[1] 63 STAT. 414, 42 U.S.C. § 1450 (1958).

[2] *Growing Problem of Federal Housing Aid*, 38 CONG. DIG. 67 (1959). This entire issue is devoted to the growing problem of housing and urban renewal. For an excellent survey of the over-all problem, see Sogg & Wertheimer, *Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration*, 72 HARV. L. REV. 502 (1959). For a case study of the operation of the program in New York City, see Hershman *et al.*, *The How and Why of Title I*, 14 THE RECORD OF THE N.Y.C.B.A. 506 (1959).

[3] Declaration of Policy, Housing Act of 1949, 63 Stat. 413, 42 U.S.C. § 1441 (1958).

"Boston's urban renewal program has made discernible progress . . . the rate of renewal activity still is being outstripped by the rate of decay . . . . [B]etween 1950 and 1960, it is estimated that . . . 22,000 more dwellings have fallen into the sub-standard category. This is nearly three times the amount of poor housing eliminated in the last ten years."[4] What is true in Boston is true in virtually every urban area in the United States. What seemed to be merely a skirmish against slums has turned out to be a war for urban survival. Although the federal government is not fighting the war alone—the states, local governments, and private developers are all allied with her in the struggle—the federal government has come to bear an increasing responsibility for the successful outcome of the battle. In part, this is true because the costs of urban renewal are so great and the federal monopoly of the tax base so tight that effective action by the other governmental members of the team is made very difficult. In part, it is because postwar federal programs in urban areas—public housing, mortgage insurance, highway and airport construction, defense contracts and installations, for example—are creating unprecedented new problems for cities, for the solution of which the federal government cannot avoid assuming responsibility. And, in part, it is simply because two-thirds or more of the people of America live in the battle areas. What affects two-thirds of the nation's population obviously is of intimate importance to the national government.

For all these reasons, there can be no retreat for the federal government from its urban renewal objective. Although President Eisenhower has slowed the fighting down in pursuance of his dual concern for a balanced budget and for what he calls "the traditional framework of our Federal system," even he has declared that "urban redevelopment [is] essential to the future vitality of our cities."[5] And housing legislation continues to be regarded as a major agenda item by both political parties in each session of Congress. Both the Executive and Legislative Branches of the Government recognize the critical nature of the battle and have pledged themselves to eventual victory.

It is important, then, to look back over ten years of urban renewal operations and to judge their effectiveness, for, to employ the military analogy once more, the weapons at hand must be suitable for the battle objectives to be gained, or victory may be impossible from the outset.

I

As already noted, the statutory authorization for urban renewal is to be found chiefly in Title I of the Housing Act of 1949, as amended.[6] It is important to note that the very title of the Act implies an emphasis on housing rather than on urban renewal. Indeed, the broader subject has been treated all along as merely an aspect of the narrower one. When Congress decided to act in 1949, it saw slum clearance as an adjunct of the housing program, and that relationship has been maintained to

[4] BOSTON MUNICIPAL RESEARCH BUREAU, CHARTING THE FUTURE OF URBAN RENEWAL iv (1959).

[5] *Budget Message, 1960*, in THE BUDGET OF THE UNITED STATES GOVERNMENT FOR THE FISCAL YEAR ENDING JUNE 30, 1961, at M40 (1960). See also 106 CONG. REC. 591 (1960).

[6] 68 Stat. 622, 42 U.S.C. § 1450 (1958).

the present day. In fact, however, urban renewal and redevelopment is the major task to be accomplished; improved housing is but one aspect of the broader program. Urban renewal means nothing less than full community development, the creation, as Adlai Stevenson put it recently, of "the preconditions of a good urban life that could become a new model for an urbanizing world."[7] Unfortunately, but understandably in the context of pressure politics, Congress seems to see the matter the other way around, so that the focus of its attention—and of appropriations as well—has been on housing. The pressure for homes right after the war was easy to appreciate. No cause perhaps had more ardent or more politically powerful advocates. The need to save urban centers from progressive blight and eventual strangulation, on the other hand, was complex and hard to grasp; and it lacked persuasive political force. Thus, the resulting emphasis in legislation on the former and not the latter was a natural product of the situation. Not that improved housing was not then and is not still important. There was indeed a mounting housing crisis after World War II, and Congress properly acted to meet it. The difficulty is that in its concern to meet one need, it failed to understand that it was neglecting a greater one. To this day, urban redevelopment has not been brought to the center of the stage where it belongs; and it suffers from the minor role it has been assigned.

One result of regarding urban renewal as an aspect of the housing program has been its emphasis on residential building and improvement. Yet residential areas obviously cannot be divorced from the commercial and industrial areas where the people shop and work. The federal program should be amended so as to demonstrate an understanding of this basic fact and to provide for the renewal of nonresidential areas. Seen properly, urban renewal involves the whole life of the urban dweller; seen as a satellite of the housing program, it involves only a part of his life.

The federal urban renewal program suffers, too, from the piecemeal way the housing program has been developed. Different aspects of the program have been handled at different times by different committees in Congress in response to different kinds of pressures. Over the years since 1949, statute has been piled on statute, amendment on amendment, until considerable expertise is needed to comprehend the program. Over forty changes in the law were made by the Housing Act of 1959 alone.[8] The very complexity of the legislation handicaps its effective application. As the mayor of Philadelphia recently testified, the law is "so full of 'provided thats' and 'notwithstandings' that it is a nightmare to track down just what is provided for."[9] Even the compilation of *Federal Laws Authorizing Assistance to Urban Renewal,* issued by the Housing and Home Finance Agency, is difficult and confusing reading. To the lay members, at least, of an Urban Redevelopment Commission, to say nothing of to interested and concerned citizens, the whole program

[7] Stevenson, *National Purpose: Part II, Extend Our Vision . . . to All Mankind,* Life, May 30, 1960, pp. 86, 100.

[8] See HOUSING AND HOME FINANCE AGENCY, FEDERAL LAWS AUTHORIZING ASSISTANCE TO URBAN RENEWAL AS AMENDED OCTOBER 1, 1959 (1959).

[9] *Hearings Before the Senate Committe on Banking and Currency on the Housing Act of 1958,* 85th Cong., 2d Sess. 293 (1959).

often appears to be lost in a maze of legal phraseology. Certainly one of the reasons the urban renewal program has been slow to catch the public imagination is because, so complicated has it become, it cannot be communicated easily.

Moreover, obscure and complicated legislation aids and abets delay and red tape, and a universal complaint about the urban renewal program since the beginning has been the "detailed and cumbersome . . . procedures and requirements" which it involves.[10] Often five to seven years have been consumed in processing an urban renewal application. Such delays obviously cause the loss of many opportunities to handle particular urban renewal problems effectively.

The administration of the urban renewal program only makes the situation worse. Although the basic administrative unit is the Urban Renewal Administration, URA is only a child of the parent Housing and Home Finance Agency, the title of which again suggests an unfortunate emphasis. As if it does not trust the child, Congress has endowed the Administrator of the Housing and Home Finance Agency, not the Commissioner of the Urban Renewal Administration, with the responsibility for approving the Workable Programs developed by local communities under the terms of the act. Indeed, administration of the program is highly centralized in HHFA. All contacts outside of Washington must be made with regional HHFA offices, which are chronically understaffed. To be sure, HHFA and URA must protect the funds appropriated for urban renewal by determining the legal eligibility and the practical feasibility of project applications, and in doing so a certain amount of central control is demanded. Many observers feel, however, that far too much control is exercised. Thus, the Baltimore Urban Renewal Study Board, reporting to the Mayor of Baltimore in 1956, complained that "many of the delays and problems encountered . . . by local government agencies are due to limitations imposed both by law and administrators at the federal level. A comprehensive renewal program . . . is being hampered through unnecessary controls."[11] And the Baltimore complaint is not an isolated one.

To make matters still worse, not all federal activities affecting urban renewal are subject either to the HHFA or the URA. The Bureau of Public Roads, the Veterans Administration, the Department of Defense, and the Department of Health, Education and Welfare all carry on activities with a direct impact on urban development, and the programs of a number of other federal agencies have a lesser degree of impact on it.

To some extent, these failings are present in all complex governmental activities. Urban renewal is probably no worse off in this regard than many other federal programs. If the fact that the problem is common to all large-scale government operations excuses the urban renewal program to some extent, however, it must be acknowledged that the basic legislation needs to be simplified and clarified, cumbersome procedures need to be abolished, and lines of authority straightened out. In

[10] STAFF OF SUBCOMM. ON INTERGOVERNMENTAL RELATIONS, HOUSE COMM. ON GOVERNMENT OPERATIONS, 85TH CONG., 1ST SESS., SIXTH ANNUAL REPORT 14 (Comm. Print 1957).

[11] BALTIMORE URBAN RENEWAL STUDY BOARD, REPORT TO MAYOR THOMAS D'ALESANDRO, JR., 14 (1956).

March 1960, Commissioner David M. Walker of the Urban Renewal Administration announced that "Federal regulations guiding the planning and execution of urban renewal projects have been greatly condensed and simplified. . . . We now have a single document of clear instructions." "Cities engaged in Federally-aided urban renewal have long been asking for greater authority and corresponding responsibility," Commissioner Walker went on. The new *Urban Renewal Manual*, eliminating as it does "many former requirements and greatly simplifying the rest, gives them the freedom and responsibility they want and should have."[12] It is, of course, too early to tell if the revised regulations will alleviate the problem and serve to speed up the urban renewal process, but at the very least the fact that such a condensation has been made is a giant step in the right direction.

II

The more important faults of the urban renewal program lie in other directions. First and foremost is the fact that urban renewal as a concept has so far been confined to the community, a concept now outdated. Thus, the section of the law requiring a Workable Program specifies that the program shall demonstrate that it deals effectively "with the problem of urban slums and blight within the *community*" and that it is directed toward "the establishment and preservation of a well-planned *community*. . . ."[13] Loans are authorized to assist local *communities* to eliminate slums, and the Act specifies that the "governing body of the *locality*" shall approve the acquisition of real property as the first step in the loan process.[14] Even the HHFA circular describing the program is entitled "How *Localities* Can Develop a Workable Program for Urban Renewal."[15] Nowhere in the Act is a "community" defined. And although the Administrator is admonished to "encourage the operations of . . . public agencies . . . on a State, or regional (within a State), or unified metropolitan basis,"[16] no specifics are enumerated. As Quintin Johnstone has remarked, "Another point at which the federal urban renewal program is subject to criticism is in its concentration on problems and interests of central cities rather than on [those] of metropolitan areas, of which the central cities are merely a part."[17]

Section 701 of the Housing Act of 1954 does recognize "planning problems resulting from increasing concentration of population in metropolitan and other urban areas" and authorizes planning assistance grants to statewide, metropolitan and regional planning agencies, which shall be used to plan for "entire urban areas having common or related urban development problems."[18] While the assistance thus

[12] See U.S. Municipal News, March 20, 1960, p. 1.
[13] 70 Stat. 1103, 42 U.S.C. § 1451(c) (1958). (Emphasis added.)
[14] 70 Stat. 1097, 1099, 42 U.S.C. § 1452(a), (d) (1958). (Emphasis added.)
[15] Emphasis added.
[16] 70 Stat. 1103, 42 U.S.C. § 1451(b) (1958).
[17] Johnstone, *The Federal Urban Renewal Program*, 25 U. CHI. L. REV. 301, 351 (1958). This article is well worth reading in its entirety.
[18] 68 Stat. 640, 73 Stat. 678, 40 U.S.C.A. § 461 (Supp. 1959).

authorized has been significant—as of December 31, 1959, ninety-four metropolitan areas, urban regions and special areas had been awarded planning assistance grants—in too many cases official planning agencies operating on the required broader basis are nonexistent. Thus the provision is not as meaningful as it might be. And there is nothing in the law to encourage the establishment of such agencies by the states.

The crux of the matter is that urban renewal cannot properly be considered as affecting only a community, a neighborhood or a locality, in other words, parts of much larger wholes. The effects of slum clearance and urban redevelopment—and of conservation and rehabilitation—reach far beyond the renewal areas themselves and touch the entire urban region of which they are a part. The impact of slums and redeveloped areas on the flight to the suburbs is manifestly a direct one. The economics of the whole urban complex are involved in every renewal project. Highway and street construction, water supply and sewerage, traffic and parking, mass transit, and a host of other activities must all be considered, along with urban renewal, as parts of a single metropolitan picture. Former Housing Administrator Albert M. Cole showed his understanding of the problem in a speech in 1957:[19]

> Twenty years ago we thought in terms of individuals. . . . Then we recognized that this was too limited. . . . We began to think in terms of local areas and neighborhoods. . . . In the Housing Act of 1954 we moved another . . . step forward. We dealt with the community as a whole. . . . But as we top one hill and look ahead, we find an even wider horizon ahead of us—another hill to climb if we are to continue to progress. In these few years I have discovered that even the community is not the final entity that we must consider—that it is part of a growing and expanding urban economy which moves with giant strides not only into the suburbs but into the interurban stretches that no longer define the country and the town. Today it is in these broader terms that we must think and plan—the community as part of the region. . . .

To date, however, the urban renewal legislation has not been altered to bring it into line with such advanced thinking. Just as the 1954 amendments to the original Housing Act raised the sights of the federal government's program from clearing slum pockets to working out an integrated program of community redevelopment, so now the program needs to be amended to permit an all-inclusive approach to the problem of urban decay in metropolitan areas.

There are admittedly legal difficulties barring immediate accomplishment of this objective. The whole metropolitan area problem is made hard to attack by the fact that metropolitan areas, with the exception of the Miami area, have no corporate existence in the United States. Having no legal foundation, they have no over-all governmental organization to which federal grants can be made. If at first glance, however, it appears that this is a problem beyond the reach of the federal government and that under our federal division of powers it belongs to the states, there is, nevertheless, much the federal government could do through its own activities and through its grants-in-aid programs to encourage the creation by the states of larger units of government to fit present and future social and economic realities in metro-

[19] Housing & Home Finance Agency Press Release, June 17, 1957.

politan areas. The federal government might, for example, require all its grants-in-aid programs, housing and urban renewal among them, to be related to comprehensive metropolitan plans rather than, as at present, to comprehensive community plans. It might amend the Workable Program concept so as to include the idea of regional planning. It might require as a condition precedent for federal aid that the local public agency be representative of the entire area rather than of a single city or county. There is something to be said for saving trees; there is much more to be said for saving the forest.

Equally critical to the long-term success of urban renewal is its successful coordination with other urban programs of both the federal and state governments. It has even proved difficult in many cases to coordinate urban renewal and public housing projects in a single city, even though both are activities of the HHFA, for the law permits the public housing and redevelopment programs to be handled by separate local agencies and does nothing to require their coordination.[20] Moreover, the matter of timing is of crucial importance. Very few cities are able to launch projects under several major programs simultaneously. A city's financial resources are almost always limited, and the amount of state aid available is in most cases not large. Thus many cities may have to forego undertaking an urban renewal project or beginning additional projects in order to take advantage of federal aid in other program areas. This has been particularly evident in connection with the highway program since 1956. The highway program far overshadows the urban renewal program both in the total amount of federal assistance to be offered and in the publicity with which it has been heralded. In the face of such temptation, almost every city faces a very hard problem indeed in achieving a balance in the allocation of its limited resources. "The benefits to be derived from . . . freely-flowing, controlled access expressways might seem so important to a community as to tempt it to concentrate on highways to the exclusion or detriment of . . . urban renewal."[21] The necessity of making such a choice has become only too common in recent years. "Coordination [would] save public funds and speed both programs."[22] But such coordination has not yet been worked out.

Launched independently as each federal urban program is, there is seldom any effective provision for coordination between them. A common headline across the country in the last few years has been "Delay in Expressway Site Slows Urban Renewal Plan." In virtually every case, the article following the headline reveals a lack of coordination between the state highway department and the community with a projected redevelopment plan. Mayor Taft of Cincinnati illustrated the problem very well in recent testimony before Congress:

[20] See, on this point, EDWARD C. BANFIELD & MORTON GRODZINS, GOVERNMENT AND HOUSING 69 *passim* (1958). This book is already a classic in its field.

[21] ACTION [AMERICAN COUNCIL TO IMPROVE OUR NEIGHBORHOODS, DAYTON, OHIO], SUMMARY OF THE MIDWEST URBAN RENEWAL CLINIC 21 (1957).

[22] *Ibid.*

We have a new bridge coming across the Ohio, which is going to be built under the interstate highway program. The approaches on the Ohio side, in the middle of Cincinnati, are 60 acres, and they run through our absolutely worst slums, and they are overlapping our present major redevelopment project which covers 450 acres that include the 60 acres. There the interstate highway and the urban renewal program . . . should be operated as a unit in planning and acquiring property."[23]

When land is purchased for highways, whole city lots are acquired, Mayor Taft went on. Frequently, however, a highway uses only a portion of the land acquired, leaving uneven amounts of land on both sides of the highway. "It would make a great deal more sense," the Mayor concluded, "if the urban redevelopment people bought the entire ground and sold back for highway purposes only the right of way. . . . They would then manage all these little odd pieces that go along the side of the highway. . . ."[24] Neither the urban renewal legislation nor the highway legislation makes any provision to accommodate so obviously wise a suggestion.

Nor is any provision made in the highway legislation for the relocation of families which will have to be moved to make way for the urban expressways contemplated by that program. To be sure, aid under section 221 of the Housing Act is available for persons who must be relocated because of highway or expressway construction; but the low maximum amounts per unit allowed by the statute do not attract many builders. As Mayor Richardson Dilworth of Philadelphia has pointed out, if people are not given adequate "help in relocating from the path of highways, this obviously augments the housing problems which the renewal program is trying to solve. . . . Renewal activities must be closely related to the programming of highways if we are to avoid, on the one hand, the creation of new blight along new highways, and on the other hand the chewing up of a newly renewed area to make way for a new highway."[25] "All of us working in urban renewal . . . are missing many a grand chance by not coordinating more closely our freeway and urban renewal plans," concludes a local redevelopment official in Los Angeles.[26]

Similarly, federal activities in the field of recreation, airport construction, water pollution control, civil defense, to name only a few, are all allowed to operate independently and under separate administrative auspices, without a mechanism for coordination. For the most effective operation of each of them, both national and local coordination should be required. One area in particular demands immediate attention. The federal government locates and enlarges its defense and military installations in urban areas virtually oblivious of the impact of such action on the problem of urban redevelopment. Indeed, in the negotiations to obtain a military installation or to enlarge an existing one, it is common for a representative of the chamber of commerce and the congressman from the district concerned to be con-

[23] *Hearings Before the Senate Committee on Public Works on Federal Aid Highway Act of 1958*, 85th Cong., 2d Sess. 613 (1958).
[24] *Ibid.*
[25] *Hearings Before the Senate Committee on Banking and Currency on the Housing Act of 1958*, 85th Cong., 2d Sess. 293 (1958).
[26] Claire, *Urban Renewal and Transportation*, 13 TRAFFIC Q. 418 (1959).

sulted; but it is seldom that the city planning director or the head of the local urban redevelopment agency is called in. While this may not be a deliberate oversight on the part of military authorities, since the local people are usually chiefly responsible for determining the composition of the bargaining group, the military authorities have done nothing to facilitate better coordination. In areas where military installations are projected, and metropolitan planning agencies do not exist, the federal government could well take the initiative in bringing together city planners, urban renewal directors, and other local representatives to consult on appropriate locations. The problem is one of leadership, and it is in the province of Washington to exercise it.

Once again the lack of coordination among federal programs in urban areas is rooted in the fact that metropolitan areas lack any responsible over-all governing body. Thus, urban renewal is parcelled out to the redevelopment agency, expressway construction to the state highway department, airport construction to the airport authority, civil defense to the director of civil defense, and so on. Each moves in the direction that seems best from its limited viewpoint. Perhaps there is no answer, at least no easy answer, to the problem of coordination—and thus to the improvement of this aspect of urban renewal—until some headway is made in attacking the problem of government in metropolitan areas. Here again, however, Washington might lead the way. There are few signs yet that it will do so.

III

Better coordination of the many government programs having impact on urban areas with urban renewal plans would constitute a major advance. However, the urban renewal program is handicapped in reaching its objectives by more than lack of coordination. To a large degree, the federal government's several housing and mortgage insurance programs work at direct cross-purposes to the urban renewal program. Renewal is largely a matter of the central city. It is chiefly the downtown slum areas which need to be renewed and redeveloped (although slums have popped up already in an alarming number of new suburbs). Slums are primarily multifamily rental residences; and the great need in a redevelopment area is for replacement housing which will accommodate the large number of people being displaced at a rent they can afford, and constructed in a way that will meet their emotional and social needs satisfactorily. The federal mortgage insurance programs, however, operate in almost direct opposition to these requirements. The FHA and GI programs are far more favorable to the construction of single-family homes than to multifamily rental units. FHA regulations do not encourage renovation of old houses in run-down areas. Rather they show decided partiality to the new single-family dwelling. And since land for single-family dwellings inside the central city is generally limited, developers go to the suburbs and erect small houses there. The result of FHA emphasis is that from "every large urban center the suburbs spread

out and out, without shape or grace or any centered form of civic life. Many are so built that they are the slums of tomorrow."[27]

Meanwhile, the would-be apartment-house builder is restricted in many ways. To receive federal aid, he must file a cost certificate; if he manages to build below his estimate, he is penalized by having the amount of his mortgage loan reduced proportionately, regardless of the value of the property. Moreover, his profit rate is restricted, his rents are regulated, and he must manage the building over a period of years to get his profit out of the enterprise. All these factors make building needed multifamily rental housing much less attractive to developers than suburban houses and explain, to some extent at least, why so much of the housing built since World War II has been in single-family units.

Nor has the government's public housing program been an adequate substitute. More often than not, the only recourse has been to erect a public housing project in an urban renewal area, but such projects are seldom satisfactory. "These vast, barracks-like superblocks [seem to be] designed not for people who like cities, but for people who have no other choice."[28] Too many are cut off from city life. They are, to use a term frequently applied to them by their builders, "self-contained." But practice belies the assertion. There is no place in most of them for the development of a community life to replace the very strong sense of community which was characteristic of a great many slum areas. "People get to feel fond of the shabby little drugstore on the corner, or the dusty vacant lot where the kids play stick ball."[29] It is hard to feel much warmth toward the sterile structures that have replaced nearly every feature in the neighborhood with which the people were familiar. Not surprisingly, then, in the vicinity of many of the new public housing projects "a host of little enterprises has sprung up . . . grocery stores with fruit out front in the street, discount houses covered with garish signs, pastry shops, delicatessens, a Happy Time Bar and Grill" and a host of other "perversities" to fill the void.[30]

Moreover, in serving families low on the income scale, public housing has taken an unnecessarily large proportion of broken families, families without a wage-earner, or with family heads chronically unemployed or incapacitated. "As a result, projects have tended to become social and economic ghettos." Moreover, there is "an increasing tendency to locate projects in areas already occupied by nonwhite families, thus decreasing rather than increasing racial democracy."[31]

All these factors lead to the conclusion that public housing projects should give greater consideration to the social needs of the people who are to live therein—both for the sake of their welfare and to assure that the broad objectives of urban renewal

[27] Stevenson, *National Purpose: Part II, Extend Our Vision . . . to All Mankind*, Life, May 30, 1960, pp. 86, 99.

[28] Whyte, *Are Cities Un-American?*, Fortune, Sept. 1957, p. 123, reprinted in EDITORS OF FORTUNE, THE EXPLODING METROPOLIS 25 (1958).

[29] See the editorial comment on this point in Saturday Evening Post, Feb. 14, 1959, p. 10.

[30] Whyte, *supra* note 28, at 44.

[31] Report of a conference arranged by the Metropolitan Housing and Planning Council of Chicago and ACTION, Feb. 1960, quoted in Sears Urban Renewal Observer, April 1960, p. 4. On the latter point, see also Grey, *Los Angeles: Urban Prototype*, 35 LAND ECON. 237-38 (1959).

will in the end have any meaning. Public housing should be more attractively designed, should look less institutional, less like jails or hospitals—efficient, clean, but a social vacuum. More important they should be designed in recognition of the sociological factors which make for successful community living; they should provide play space for children, meeting places for adults, and recreational facilities for senior citizens, out of which a sense of community can be developed.

Emphasis on public housing for low-income groups has resulted in a failure by the federal government to recognize the nearly as great needs for better housing of the middle-class-income groups in urban centers. Building costs and property values in urban centers have risen faster than the ability of many middle-class-income families to meet them. Yet the public housing limitations on income are too low for them to qualify, even if they wanted that kind of housing. The only answer has been either to desert the central city and join the exodus to the suburbs, or to continue to live in deteriorating houses in deteriorating neighborhoods. As the Senate Subcommittee on Housing reported in April 1960, it is now evident that the housing needs of families of moderate income cannot be met within the foreseeable future "unless new programs for this purpose are fostered by the Federal Government, or by States and local governments, or by all levels of government."[32] In recognition of the problem, New York has recently created its own direct loan agency for rental housing to supplement the federal housing program in the middle income areas. Recommending the action, Otto L. Nelson, Jr., chairman of the Governor's Task Force on Middle Income Housing, noted that "a large number of middle-income families have been forced into suburban residences by lack of suitable accommodation at reasonable rents . . . in close-in situations . . . this unbalance has been brought about in part by governmental housing policies not equally beneficial to all housing. The outward trek of the middle-income family has been greatly accelerated by federal home mortgage programs greatly favoring the suburban single-family house."[33] The new state agency in New York is intended to meet the need in that state; there is little doubt that similar action would be beneficial in other states. Once again, leadership from Washington would go far toward providing solutions to the problem.

The problem is not one, however, which can be solved by the Urban Renewal Administration alone. The solution lies deeper than that. It must proceed from a recognition of the fact that urban redevelopment depends on the successful relation of many different programs one to the others, and that the benefits of action by one agency to assist urban renewal projects may be cancelled by the action of others in building public housing units, encouraging suburban development, building new expressways, or planning a new military installation. To some extent, at least, the more effective coordination of government programs would advance the progress of urban renewal. Yet even this would be to no avail if behind such a move did not

[32] *Home Mortgage Credit, Report of Senate Subcommittee on Housing*, 106 CONG. REC. 7518 (1960).

[33] *ACTION Puts Cost of Total Urban Renewal at $42 Billion a Year Over Current Spending*, Architectural Forum, May 1960, pp. 5, 6-7.

lie an understanding of urban renewal as more than merely removing inadequate housing, but instead as involving every aspect of urban life.

Perhaps the Achilles' heel of urban renewal[34] will turn out to be the relocation of the residents of areas to be renewed. In New York City alone, as many as 500,000 families—over one fifth of the city's population—will probably be uprooted as urban renewal needs are met in the next fifteen years. Such massive turnover in population has obvious implications for every facet of community life. Some relocation is temporary only. Slums must be torn down before replacement housing can be built. In the meantime, the people who are removed from the site must be housed. More often, relocation is permanent. Although statistics are not easily available, it appears that about a third of the people displaced from renewal areas leave those areas altogether. A movement of that proportion amounts in many cases to mass migration. Unfortunately, however, relocation has too often been treated as a minor problem of secondary importance. It is often handled by a separate agency rather than being coordinated with the urban renewal program. In Boston, in the New York Streets project, the relocation office was established just four weeks prior to the taking of property. "This left too short a period for the staff to become acquainted with the residents and their relocation problems," the Boston Municipal Research Bureau concluded, in a study of the project.[35] The same kind of thing has happened elsewhere. The federal government could do a great deal toward eliminating the neglect of relocation on the local level if it would spell out in greater detail, and put teeth into, its requirement that a workable program should include a demonstration that families displaced by urban renewal and other governmental activities will be adequately rehoused. Relocation handling should be regularized and not be permitted to rest with the developer, as it does in New York City. Nor should the mere requirement of the statute that displaced people be moved to decent, safe, and sanitary housing be accepted as enough. Too often, relocation results in fact in moving from one substandard housing area to another. The present federal grant of $200 to individual family units and $3000 to businesses to aid in relocation is not enough in many cases to make a real difference. The whole relocation problem is one which has been neglected and seriously needs attention. Until it and the related problem of providing the type of housing actually needed in renewal areas are solved, the objectives of urban renewal will be frustrated.

IV

Certainly one of the major problems of the urban renewal program arises out of the fact that while the declared purpose of the program—to provide decent housing and a suitable living environment for all American citizens—is a long-term goal, appropriations have been made on a short-term basis. In the light of the estimates made earlier this year by ACTION that a grand total of $100 billion a year should

[34] The phrase used in a review of J. ANTHONY PANUCH, RELOCATION IN NEW YORK CITY (1959), in 51 PLANNING BOOKSHELF 3 (1960).

[35] BOSTON MUNICIPAL RESEARCH BUREAU, CHARTING THE FUTURE OF URBAN RENEWAL 12 (1959).

be spent on urban renewal for the next ten years if the spread of urban blight is to be halted and overcome,[36] as well as of the survey recently conducted by the American Municipal Association and the United States Conferences of Mayors, which showed an estimated need of a total of $3,617.9 million in federal grants for urban renewal between now and 1970, it is obvious that the battle has only been begun. The same figures make it clear that there can be no cut-off date imposed on the program if it is to accomplish its objectives.

Successful planning of so massive a program as urban renewal cannot take place in fits and starts. Officials of local communities believe it is imperative, Senator John Sparkman reported, "that the Federal government be committed to a continuous and adequate urban renewal program to assure the local communities of Federal support as local plans are developed."[37] Of course, lack of continuity plagues all government programs. One need only cite defense planning to illustrate the point. Continuity of action is a problem across the board in government, and it may well be a problem which defies solution. Even so, a great deal of unnecessary uncertainty and confusion has resulted in the urban renewal program from the two- and three-year authorizations Congress has seen fit to grant. Putting the program on a longer-term basis would remove many of the hardships of planning and would facilitate the operation of the program.

More important, perhaps, is the size of the federal contribution to the program. Federal resources are not without limit, and there is general agreement that both taxes and borrowing are already at uncomfortably high levels. On the other hand, in the latest federal budget, only 0.2 per cent of the proposed expenditures were for urban renewal. President Eisenhower has insisted throughout his administration that the federal portion should not be increased. Indeed, his vetoes of the housing bills have been largely on the grounds of overexpenditure. It is his contention that "nothing is really solved, indeed [that] ruinous tendencies are set in motion, by yielding to the deceptive bait of the 'easy' Federal tax dollar."[38] And the President has a valid point. But it is a truism that the automobile has depopulated the central cities and permitted both industry and upper-income families to migrate to the suburbs, taking with them a large part of the possible tax base. If the cities could develop a practical means of taxing suburban residents and industries who nevertheless receive benefits from their nearness to the central city, reliance on such a tax would no doubt be preferable to federal taxes and federal grants. But no such practical means have been developed. And few states are able to offer much help. The matter boils down very quickly to the fact that, if anything like the proper kind

[36] *ACTION Puts Cost of Total Urban Renewal at $42 Billion a Year Over Current Spending*, Architectural Forum, May 1960, p. 5.

[37] Senate Comm. on Banking and Currency, *Housing Act of 1959*, SEN. REP. No. 41, 86th Cong., 1st Sess. (1959). See also pro and con discussion, *Should Federal Urban Renewal and Public Housing Programs Be Substantially Increased?*, 39 CONG. DIG. 76 (1959).

[38] *State of the Union, Address of the President of the United States*, 106 CONG. REC. 139 (1960). See also H.R. Doc. No. 241, 86th Cong., 2d Sess. (1960).

of action is to be taken, the federal government must support it. It is not a matter of choice; it is a matter of necessity.

The need for continued and increased federal aid becomes even clearer when present commitments are examined. President Eisenhower reported in his Budget Message on January 18, 1960, that while planning had been initiated on 647 projects in 385 communities, only 26 urban renewal projects had been completed and that only an additional 355 projects for which federal funds had been obligated were under way. Sixty-five more projects, the President reported, would be completed by the end of 1961, and 155 additional projects would be gotten under way.[39] There is thus a considerable gap already between the number of programs planned and those actually under way. And the gap has widened since January 1, 1960. On March 1, HHFA reported that 115 additional applications for projects had been approved since the last reporting date. Even in New York City, where the need is possibly the greatest, the urban renewal program is essentially only in the planning stage and cannot be expected to move beyond the pilot project stage for several years.

In reality, therefore, urban renewal up to the present has been largely confined to planning. If plans are to move off paper and be converted into concrete, the federal government must honor its commitments. However, it must do more, for projects in many urban areas badly in need of renewal have not yet been planned. Not only is there a backlog of approved plans to be converted into action; there is still a vast reservoir of need to be recognized and reduced to workable programs. The federal government, having launched the program, cannot in justice withdraw until its objectives have been met. Only the federal government has the resources to make fulfillment of those objectives a reality.

V

Perhaps the most serious weakness of the urban renewal program has been that it was set to work, and has operated since, in a vacuum. From the beginning, it has been marked by a lack of emphasis on research. Very little is known either about the effectiveness of its procedures or about the validity of its goals. In the last ten years, some good private research has been done in the field, and the literature about urban renewal is by now quite respectable.[40] But little attempt has been made to apply what has been discovered to on-going programs. Neither the HHFA nor the URA has a research function. URA does make grants to state and local public agencies for developing, testing, and reporting on improved techniques for preventing slums and eliminating urban blight; and it provides an urban renewal service to assist localities in preparing plans and programs. However, it does not claim to be a research agency itself. The Senate Subcommittee on Housing has recommended

[39] 106 CONG. REC. 591 (1960).

[40] See appropriate headings in METROPOLITAN COMMUNITIES: A BIBLIOGRAPHY (1956); and METROPOLITAN COMMUNITIES: A BIBLIOGRAPHY, SUPPLEMENT 1955-57 (1960).

the establishment of a research program within HHFA, and that recommendation should be acted upon.[41]

Thus, no one is sure what really is the impact of urban renewal projects on the over-all development of the cities in which they are located—to say nothing of the nature of their impact on surrounding metropolitan areas. Despite large federal expenditures over the last ten years and a great deal of organization and activity, no one is sure whether in the long run the result will be good or bad. The millions of dollars being spent for redevelopment are setting the pattern of metropolitan communities for years to come; yet the pattern may turn out to be far from ideal. Conducted, as the urban renewal program is, without necessary correlation with other federal programs in urban areas, it is entirely possible that the end product may be no improvement at all. The tragic thing is that no one seems concerned about finding the answer. The assumption in the program—and the assumption of this author—is that urban renewal is justified and necessary. That assumption should be tested. The present dearth of empirical data and the lack of adequate working concepts must be overcome. This is perhaps the most important step that should be taken.

The difficulty is that that step will probably not be taken, nor will any of the other recommendations made here and elsewhere be put to the test, without effective leadership. There is a pressing need in Washington for real leadership in urban renewal. Congress has provided the tools; the Administration has dragged its feet. President Eisenhower's interest in urban renewal is polite only, and those who have served him in the HHFA and URA have perforce reflected his lack of warmth. Thus, Mayor Leo P. Carlin of Newark, N. J., after meeting for over two hours with HHFA Administrator Norman P. Mason, commented: "We don't feel their hearts and souls are in the [urban renewal] program. We are trying to educate them to go all out. . . ."[42] Mayor Carlin's feeling has a firm basis in fact. It does not suffice to argue that initiative must be left with localities, that "we must, if we value our historic freedoms, keep within the traditional framework of our Federal system with powers divided between the national and State governments," as President Eisenhower declared in his 1960 State of the Union Address.[43] The fact is that urban blight is no longer a local problem. Washington has simply failed to wake up to the fact that this is no longer an agricultural country, but one composed chiefly of urban dwellers. The condition of the cities, in which the majority of American citizens work, live, and produce the bulk of the nation's economic wealth, is of grave and immediate concern to the federal government. The question of federalism and the distribution of powers between the nation and the states is really beside the point. Indeed, the point is that facts have made the theory irrelevant.

[41] *Home Mortgage Credit, Report of the Senate Subcommittee on Housing*, 106 CONG. REC. 7518-20 (1960). See also S. 3379, A Bill to Establish an Annual or Biannual National Housing Goal, 86th Cong., 2d Sess. (1959), submitted by Senator John J. Sparkman of Alabama, April 18, 1960.

[42] Quoted in 106 CONG. REC. A2720 (1960).

[43] 106 CONG. REC. 139 (1960).

The only issue today is whether the process of decay will be allowed to spread until any action is too late, or whether the federal government will accept its clear responsibility and act to make the objectives of the Housing Act of 1949 a reality. Only a determined leadership, based on an understanding of the real nature of urban renewal and of the defects of the present program, can translate those objectives into fact.

STATE AND LOCAL INCENTIVES AND TECHNIQUES FOR URBAN RENEWAL

WILLIAM L. SLAYTON*

State and local incentives and techniques for urban renewal fall under three basic categories. The first is state enabling legislation granting municipalities the authority to utilize the property tax in some special way to assist urban renewal activities. The second general category covers state financial and technical assistance to municipalities. A few states have adopted such measures, but they are not widespread. The third general category relates to municipalities only. It covers the activities undertaken by a municipality under its own authority to assist urban renewal. This is the area where the greatest assistance to the program can take place; and it is also the area where urban renewal has met its greatest impediment.

I

USE OF PROPERTY TAX

A. Tax Abatement

In the 1930's and 1940's, many states adopted laws generally entitled "Limited Dividend Housing Corporation Law."[1] The purpose of these laws was to encourage private developers to undertake slum clearance activities and produce housing for low- or moderate-income families. Incentives offered were two: tax abatement and the power of eminent domain. In these early days, the only effective program for slum clearance was public housing, and these laws were passed to add an additional tool to the slum clearance program. At this time there was no federal aid program assisting cities financially so that the cost of the land could be written down to its new, reuse value. Tax abatement, therefore, provided the same financial incentive as does the "write down" under the present federal program.

With these incentives, of course, went limitations and controls. Dividends were limited (usually to six per cent of the value of the stock), rents were frequently controlled, and the project had to be reviewed and approved by a local and/or state board.

When these laws were passed, it was hoped that insurance companies would make considerable use of them, and additional legislation was passed permitting insurance

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[1] For a tabulation of the twenty-two states with such legislation, see Gazzolo, *The States in Housing and Urban Renewal*, BOOK OF THE STATES 421 (1959).

companies to invest in direct ownership and management of rental housing projects. These laws seemed particularly appropriate, for insurance companies, as investors, do not demand a high rate of return on their capital; and with the incentive of tax abatement, it was felt they would be able to achieve the return allowed by the law.

The tax abatement features in these laws vary among the states, but the most general provision is a freezing of the taxes or the assessment at the amount prior to the undertaking of the project. This freeze continues for a specified number of years. In other instances, the taxes are based on a percentage of the normal assessment, and this lower assessment continues for a specified number of years. For example, the Missouri law[2] taxes only the land for the first ten years and only at its assessed value prior to development. For the next fifteen years, the land and improvements are taxed at "fifty percent of the true value of such real property." In New York[3] the property is assessed at fifty per cent of what would be its normal valuation, and the lower assessment may continue for a maximum of thirty years.

Although tax abatement came into the picture via the limited dividend housing laws, it gradually crept into redevelopment as well. State redevelopment laws provide for limited dividend redevelopment corporations and establish limitations on earnings in addition to granting tax abatement and the power of eminent domain.

In nearly all instances, these limited dividend corporation laws provide for the power of eminent domain to permit the assembly of sites. Usually it is granted directly to the limited dividend corporation, but in some instances the city exercises the authority and turns the property over to the corporation after being reimbursed in full for its costs.

The early laws did not produce the activity hopefully anticipated by their sponsors. The incentives were not generally sufficient to induce many insurance companies or private developers to undertake such projects. There have been a few notable projects, of which Stuyvesant Town, built by Metropolitan Life Insurance Company, is perhaps the best known. Another successful early project erected under such a law is Quality Hill in Kansas City, Missouri, built by Lewis Kitchen.

The Missouri law is one of the few where the tax abatement feature is granted to any redevelopment project and not limited to a housing project. This has generated some nonhousing activity under the law, particularly in St. Louis. The Conduit Industrial Redevelopment Corporation undertook a 230-acre redevelopment project in 1955. The company has exercised the power of eminent domain to acquire some of the parcels; but the condemnation has been contested and the suits are now pending in the Circuit Court of St. Louis. Another area in St. Louis has also been declared a redevelopment area under this law. Involving some seventy-seven acres, it will be used for a baseball and football stadium, parking, motel, and other commercial uses.

However, it is not only nonhousing projects that have been instigated under the

[2] MO. ANN. STAT. § 353.110 (1952). This law applies to St. Louis and Kansas City only.
[3] N.Y. PUB. HOUSING LAW § 320.

Missouri law. In fact, Missouri is an exception to the statement that these laws have not produced the activity anticipated by their sponsors. Lewis Kitchen, who seems to monopolize this redevelopment process, has completed construction of Quality Hill Towers, a housing project adjacent to his original Quality Hill, which was built in 1950. In addition, he has been successful in having St. Louis select him as the redeveloper under this law of a large area overlooking Jefferson Memorial Park to be used for rental housing with some commercial activities.

One feature of the Missouri law that may be partially responsible for the activity it has generated is its more generous limitation on return. Most limited dividend laws restrict the return to six per cent of the value of the stock or investment. The Missouri law, however, establishes a limit of eight per cent on the total cost of the project, including land. These net earnings are determined by deducting from gross income the costs of maintenance and operation, taxes, assessments, insurance premiums, and "an annual amount sufficient to amortize the cost of the entire project at the end of the period." This period is not to exceed sixty years.

St. Louis and Kansas City have a different policy in applying this tax abatement feature for those projects that come under Title I of the federal law and which, therefore, are entitled to write-down. St. Louis has the policy of granting both write-down and tax abatement. Kansas City takes the position that these are alternate methods and the redeveloper may choose which method he prefers. Kansas City will in some cases, however, allow a redeveloper to take advantage of tax abatement when he has acquired the property via the write-down method if he can show that tax abatement is necessary in order to carry out the project. This would be the case when it is necessary to achieve low rents. Kansas City has made one exception to its general rule.

The Kansas City projects have been or will be financed under FHA, which takes the position that the savings in taxes must be used to reduce rents or pay off the mortgage more rapidly. In one instance, the developer has applied fifty per cent of the savings to reduce rents and fifty per cent for advanced amortization of the mortgage.

Wisconsin is one other state where there has been some activity under the limited dividend law.[4] In 1948 a proposal was made to redevelop a city area under its provisions; but it failed to receive the sanction of the city. More recently, in 1959, a proposal was advanced to undertake a development in the downtown area. In this instance, however, the city council approved the project, and it is now underway. The Wisconsin law, like the Missouri law, does not limit the use of the limited dividend operation to housing projects. Commercial and industrial projects may also be undertaken.

The theory behind the tax abatement feature and the granting of eminent domain authority to limited dividend corporations is fairly clear. With no funds available to write down the cost of the land to a point where it would be financially feasible

[4] WIS. STAT. §§ 66.405-425 (1957).

for private builders to undertake redevelopment projects, some financial means had to be employed, a means that did not require the appropriation of money by the municipality. The tax abatement feature in this sense does not cost the municipality any money since its income from the property is at least as great after redevelopment as before redevelopment. If the area were not redeveloped, the income from taxes would not be increased. If a guarantee of no increase in taxes for a stated period of years gets the area redeveloped, the city will be ahead in the long run. A slum area will be redeveloped, and eventually the area will pay taxes to the city in a much greater amount than was paid by the area previously.

Where the city has no money to cover the write-down and where there is no federal grant to pay for two-thirds of it, this reasoning is logical. There is a question, however, as to whether the city is really shortchanging itself if it uses the tax abatement method rather than using write-down. It has been claimed that the cost to the City of New York in granting abatement to Metropolitan Life for Stuyvesant Town will exceed the cost of the land, and that New York would have been better off had it bought the land and given it to Metropolitan. This analysis is also borne out by another project where the savings in taxes to the developer will amount to $350,000 and the cost of the land to the developer was but $155,000. It is also apparent that the tax abatement feature, unless it runs for many, many years, cannot attract developers to costly blighted areas. The land cost cannot be excessive, for it would then require a considerable cash outlay by the developer and his mortgage would be considerably less than the cost of the improvements plus the cost of the land. This result obviously concerns the speculative builder to a much greater extent than it does an insurance company.

When money is available from the federal government to cover two-thirds of the write-down cost, it would seem wiser for a city to follow the write-down method, rather than the tax abatement method, in undertaking redevelopment projects. The cost of the project under the former is clearly indicated. The subsidy the city must advance in order to make the project economically feasible is known by all. Cost and benefit can be clearly related.

In the case of the tax abatement method, however, the subsidy being granted is really hidden, even though it can be estimated fairly well. But it is not looked upon as a cost; it is often regarded as of no cost to the city. Thus, the relation of cost and benefit is not apparent. If the tax gimmick is, in effect, to be used to finance the city's share of undertaking a redevelopment project, there are much more suitable devices for achieving the same result.

There is, however, one area where the tax abatement feature seems acceptable. Where it is a matter of public policy to obtain as low rents as possible in a private housing development and not at the same time sacrifice quality or aesthetics, then the tax abatement feature, when coupled with the write-down, can provide a subsidy to the tenants of such a project. In the event such a subsidy is granted, it would seem only sensible to require some degree of control over the rents to be charged. The

limitation of earnings, a provision already in the law, is perhaps the simplest and most direct means of exercising this control.

Nonetheless, even in the case where the city wishes to subsidize rents, it would still seem a wiser public policy to administer such a subsidy in direct and open fashion, perhaps limiting the subsidy to those most in need, and not making it a hidden subsidy, unnoticed and, therefore, frequently ignored as a factor in determining public policy.

B. Special Tax Levies

Several states have passed legislation permitting municipalities to levy a special tax for redevelopment purposes. The reason for such legislation is frequently to permit the city to exceed the tax rate ceiling established elsewhere. In all cases these levies must be approved by the governing body of the city, and the amount of the levy is based upon a budget submitted by the redevelopment agency. It is nothing more than an appropriation except that it has somewhat greater visibility because it is labeled a special levy for urban redevelopment.

The Minnesota law[5] permits redevelopment authorities to levy a special redevelopment tax not to exceed ten cents on each $100 of taxable valuation. In Minneapolis this tax has been levied continuously since the redevelopment program was organized in 1947. The funds have been used to pay the local costs of financing redevelopment projects. The redevelopment authority has also used these funds to finance planning expenditures.

Michigan permits a similar tax levy,[6] and Hamtramck is applying a one mill levy for redevelopment. Nebraska also permits such a special tax.[7] Indiana's[8] provision is almost exactly like Minnesota's. Indianapolis has been levying such a tax since 1946, levying the full rate of one mill for the first two years. The city's total income from this tax through 1959 was nearly three and a half million dollars. Indianapolis has never availed itself of federal funds because of Indiana's strong feelings against accepting federal aid.

These levies do have the advantage of giving redevelopment a somewhat higher status in seeking a share of tax revenue; and they also have the advantage of being cumulative, thus permitting the redevelopment agency to accumulate funds for future projects. So long as the redevelopment agency is required to submit budgets to support the amount of the levy requested, no violence is done to the basic fiscal principle that the governing body must make the final decision on the distribution of available revenue among competing municipal demands. Certainly, these laws have made it possible for some cities to go ahead with redevelopment where obtaining appropriations of like amounts might have been much more difficult.

[5] MINN. STAT. ANN. § 462.545 (Supp. 1959).
[6] MICH. STAT. §§ 5.3507(3), 5.3526(3) (1957).
[7] NEB. REV. STAT. § 19-2640 (Supp. 1957).
[8] IND. ANN. STAT. § 48-8562d (Supp. 1960).

C. Redevelopment Revenue Bonds

California has a constitutional amendment and has passed enabling legislation permitting cities to issue tax allocation bonds secured by only the increased tax revenues from a redevelopment project.[9] Receipts from the sale of these bonds are used by the city to meet its one-third share of the cost of the project. Specifically the law provides that the taxes collected from property in a redevelopment area on which tax allocation bonds have been issued be distributed as follows: The taxes derived by applying the tax rate to the assessed valuation of the property prior to its redevelopment is distributed to the various local taxing bodies in the usual manner. The balance of the tax receipts is segregated in a special fund which is used to retire, and pay interest on, the tax allocation bonds.

Sacramento is the first California city to utilize this provision, and Sacramento's pioneering was successful. In August 1956 it sold a two million dollar bond issue on its Capitol Mall project at a rate of 4.4983, a rate from one to one and a half per cent higher than the rate for Sacramento's general obligation bonds, but considerably less than most improvement district bonds. This bond issue was of particular importance to Sacramento because of the failure of the voters to approve previous general obligation bond issues. California requires that such bonds receive a two-thirds vote. Sacramento's vote was not up to two-thirds, but it was over one-half. No referendum is required for these revenue bonds. Minnesota[10] has a similar provision, but it has not been used. Nor has any other California city yet made use of this provision, although Los Angeles at least intends doing so.

The segregation of tax revenues for specific purposes—highways, parks, schools, redevelopment, and the like—is generally frowned upon by students of public finance. Such action removes from the governing body the freedom to weigh the demands for funds. Segregated tax revenues assure expenditures for certain items when the city council may feel that the need is greater elsewhere; this policy removes a particular function from measurement against the needs of other functions.

In this instance, however, the argument does not apply. The decision of the governing body is whether to appropriate money from current funds to undertake the project, or whether to issue bonds to pay for its share of the cost. The fact that the bonds are to be supported by increased revenues from the project does not alter the basic decision. General obligation bonds could be retired the same way; and so this is not an instance where the segregation of tax revenues for special purposes applies.

This does not mean, however, that it is always advisable to issue tax allocation bonds to finance redevelopment projects. It is a useful procedure where other methods cannot be used and does no violence to the principle of nonsegregation of

[9] CAL. CONST. amend. XIII, § 19; CAL. HEALTH & SAFETY CODE § 33950. Nevada has incorporated the entire California Community Redevelopment Law in its statutes and so includes the tax allocation bond provision. NEV. REV. STAT. § 279, 676 (1957).

[10] MINN. STAT. ANN. § 462.545 (Supp. 1959).

tax revenues. But it is not so advantageous a method as issuing general obligation bonds.

General obligation bonds can be sold at a lesser interest rate than revenue or tax allocation bonds, and this interest can be a sizable item. The same argument can be used in selling general obligation bonds to the voters as is used in selling the tax allocation bonds to the purchasers. It makes no difference whether the increased taxes are placed in a separate fund or whether they are commingled with other general revenues. In either case, it can be demonstrated that the amount of the increased taxes will pay off the bonds in a stated number of years—fewer years for general obligation bonds; more years for tax allocation bonds, since the interest rate is greater.

Revenue bonds or tax allocation bonds for financing the locality's share of net project cost should be employed only when it is impossible to use general obligation bonds, assuming that bonds will be used in any case to finance the city's share. The only two instances where it would seem advisable to use these bonds rather than general obligation bonds are: (1) when the city has reached its bonded indebtedness limit; or (2) when bond issue referenda are unsuccessful. Revenue bonds are generally exempt from both of these limitations and thus can be employed when these limitations stand in the way.

D. Tax Concessions for Property Improvement

Recently there has been an increasing emphasis on the proposal that the property tax be used as a device to encourage the property owner to rehabilitate his property and thus accelerate the urban renewal program, where rehabilitation is one of the objectives. The proposal usually takes the form of freezing the existing assessment if the property is improved—*i.e.*, the new improvements will not be assessed.

The argument supporting this proposition is based on the idea that the property-owner is being penalized when in fact he should be rewarded. When a property-owner improves his property, its value is increased; and consequently so is the assessment. The increased assessment increases the property tax; and, so goes the argument, the property-owner is discouraged from spending money on improvements. Conversely, the argument runs, if the property-owner does not have his assessment increased, he will be encouraged to fix up his property.

This proposal is a misuse of the taxing power and is also discriminatory. It grants no tax relief to the property-owner who maintains his property and benefits the property-owner who has allowed his property to deteriorate. It also violates the basic principle of the property tax; namely, that the incidence of the tax should be based upon the value of the property owned. It is also a hidden subsidy in that it seemingly encourages action without cost to the city. In fact, it is both a cost to the city and a cost, in terms of increased load, to the property-owners who have consistently maintained their property.

Also, it is not at all certain that an increase in assessment because of property

improvement is a deterrent to improvement. There is always a vocal group of property-owners who proclaim the inequity of an increased assessment, but this vocal group is not necessarily a majority. No one, of course, wishes to pay higher taxes; those who must pay often have a tendency to see injustices in an increase. But, the possibility of an increased assessment because of improvements to one's property is not necessarily a deterrent from making improvements.

For the property-owner who rents his property, the failure to increase the assessment is clearly a windfall. He will, of necessity, increase his rents to cover the value of his improvements; and if income is any measure of value, he should logically pay taxes commensurate with owners of property of similar value.

If it is the policy of the city to subsidize owners to improve their property, it would seem a much wiser course for the city to grant a direct subsidy to such owners to encourage them to do so. Actually, under FHA's financing provisions relating to urban renewal areas, the intent of the legislation is to encourage property-owners to undertake improvements by granting them more favorable financing terms than they could obtain elsewhere. The fact that the administration of these FHA provisions has not produced the desired results does not detract from the use of this method as the carrot rather than the freezing of assessments.

E. Summary

In all these instances except the special tax levy—tax abatement, segregation of increased tax revenues, freezing of assessments to property-owners—the purpose is the same—namely, the creation of a device that will make the cost of undertaking urban renewal painless or at least less painful than the usual means of meeting municipal costs. The special tax levy is a straightforward means of meeting the cost of the program so long as it is reviewed by the governing body and its demands weighed against other municipal needs.

Of the other devices, the segregation of tax revenues for tax allocation bonds is also a straightforward method of raising revenue for the program. It does not run afoul of the principle that tax revenues should not be segregated—even though on the surface it appears to do so. It is merely an alternative to annual appropriations to meet the cost, or a substitute for general obligation bonds where they are not possible because of debt limitation or special referenda requirements. State legislation authorizing cities to use such a device should be adopted by many more states. This is an area where the states can be of considerable help.

Tax abatement to the redeveloper is another matter. Its purpose is the same as the use of tax allocation bonds; the increased revenue from the project is used to pay the public costs in carrying out the project. Where tax allocation bonds are used, the cost is clearly stated and the method of payment is in the open. In the case of tax abatement to the redeveloper, the increased tax revenue from the project is, in effect, returned to the developer as a substitute for the write-down. There is no measure between write-down and tax savings, as there is where tax allocation bonds

are used; and yet it is the same source of income that is being employed to meet municipal costs.

A basic principle where subsidy is being employed is that its amount should be clearly determinable and that the recipient should be clearly identifiable. In tax abatement, the amount of the subsidy is not clearly determinable, even though one can compute the tax for the number of abatement years. The effect of an annual reduction in operating expenses has a much different effect than does the reduction in the price of the land.

In tax abatement the recipient of the subsidy also is not clearly identifiable; it appears to be the redeveloper, but is not. Where write-down is used, the subsidy is not to the redeveloper; it is to the city for its past errors and for its faith in the future. The redeveloper pays the fair reuse value of the land. The tax abatement principle is but a substitute for the write-down; the subsidy again is not to the redeveloper, but to the city. However, because the amount of the subsidy is not easily determinable, one is not sure whether the redeveloper is in fact receiving a subsidy he would not receive were he to acquire the land through the write-down method.

And finally, where it is a question of choice as between write-down and tax abatement, clearly it is to the city's advantage to use write-down, for the cost to the city if it goes the federal route will be but one-third of the project cost. In this same vein, it is also clear that a redeveloper will not employ the tax abatement method unless the benefit is as great as would be the benefit if the land were to be purchased at its fair reuse value.

The only cases where it would seem desirable to employ the tax abatement method are: (1) where because of no enabling legislation opportunity is lacking to use the write-down approach; and (2) where it is to be used as an additional incentive to produce lower rents in the first several years of the project. Tax abatement is a tool that must be used carefully if the city is not to be hurt.

Assessment concessions to homeowners to encourage property improvement require no additional comment. They are a misuse of the taxing power and are discriminatory. They should not be used.

In this particular area, therefore, the idea of the special levy is an acceptable and often a helpful means of financing urban renewal. The use of tax allocation bonds is also a useful device where other means of financing fail; it is an additional tool that the states should give their municipalities.

II

State Assistance

Several states have recognized the great demands upon localities for funds to undertake urban renewal projects and as a consequence have appropriated funds to assist their cities in meeting local urban renewal costs. These funds are distributed through a state board which in many cases is also organized to provide

technical assistance. The states where funds have been appropriated for the purpose of providing financial assistance for urban renewal are Connecticut, Illinois, New York, and Pennsylvania.

A. Connecticut

In 1958, Connecticut enacted two laws authorizing grants to municipalities for urban renewal projects. One act authorized a $10,000,000 bond issue to finance direct grants for urban redevelopment projects.[11] Grants are made for specific renewal projects that have received federal approval for financial assistance, and the amount of the grant is equal to half of the locality's one-third share. The program is administered by the Connecticut Development Commission, which has established rules and regulations for approval of projects and distribution of the funds. Nearly all of the money has been authorized for specific renewal projects.

The second piece of legislation enacted by Connecticut is concerned with industrial and commercial renewal projects ineligible for federal assistance.[12] A bond issue of $5,000,000 was authorized to finance this program, and it, too, is administered by the Connecticut Development Commission. The legislation was enacted at a time when little federal money was available for such projects. The federal legislation in 1959, however, increased the amount of grant money and eased the regulations. This has reduced the demand for state funds, for which the terms are not as favorable as under the federal legislation.

Under Connecticut's nonresidential redevelopment legislation, a project must be ineligible for federal aid before it is eligible for state aid, and this ineligibility must be demonstrated by submitting a final project report to the federal government. If the project is ineligible for federal aid, the state will pay half the cost of undertaking the project and will advance funds equal to seventy-five per cent of the planning costs. There is no provision for a temporary loan as there is under the federal law, so the municipality must raise its own funds for the purchase of the land. These provisions have generally discouraged much participation by Connecticut municipalities. New Haven and Hartford, however, each have one project underway under this law.

Connecticut has a third law which is related to urban renewal although it does not provide direct assistance to urban renewal projects. This law provides financial assistance to cities to assist them in preparing a capital improvement program.[13] Under this program, which is also administered by the Connecticut Development Commission, the state agrees to pay half of the cost, up to $3,000.

B. Illinois

In 1947, Illinois adopted legislation authorizing grants to land clearance commissions for urban redevelopment projects.[14] The legislature appropriated $10,000,000

[11] CONN. GEN. STAT. REV. § 8-152 (1958).
[12] *Id.* § 8-157 (1958).
[13] *Id.* §§ 8-161, 162 (1958).
[14] ILL. ANN. STAT. ch. 67½, §§ 55-62 (1959).

for urban redevelopment grants and established a formula for its distribution, relating the amount to the population of the area in which the land clearance commission had authority. There was also a provision for the distribution of the grants unused by land clearance commissions. By now the entire $10,000,000 has been distributed.

These grants were administered by the Illinois State Housing Board, which was required to review the application for need and to review and approve the particular project for which the money was to be used. In the early days of the federal program, field representatives of the State Housing Board felt it was their job to spread the gospel on urban redevelopment and to point out the availability of state and federal funds. As a result, there was an early rash of "reservations" of federal capital grants by many small Illinois communities. Only a few of these communities, however, actually undertook redevelopment projects. For the most part they were not adequately prepared or staffed to carry out projects, and in many cases the community itself was not sympathetic to the program. The appropriation for state grants, therefore, went to those communities that actually undertook redevelopment projects. No further appropriations have been made under this act, and all Illinois cities must finance their local one-third share of project cost locally.

C. New York

New York has authorized subsidies to municipalities to assist urban renewal.[15] The Commissioner of Housing is authorized to enter into contracts with municipalities to make periodic subsidies to assist in the clearance, replanning, reconstruction, and rehabilitation of substandard and insanitary areas pursuant to any law authorizing municipalities to establish and carry out a federal program of urban renewal with federal aid.

D. Pennsylvania

Pennsylvania has had the most active and the most generous urban redevelopment assistance program. The legislation was enacted in 1949 and with it went an appropriation of $15,000,000 to assist both housing and urban redevelopment.[16] In 1955 an additional $5,000,000 was appropriated; in 1957, $2,800,000; and in 1959, $5,000,000. As of April 30, 1960, the state had entered into contracts with cities amounting to nearly $13,000,000 in state grants for urban redevelopment and had spent one and a quarter million in grants to assist local housing projects. The result has been to stimulate Pennsylvania localities to undertake redevelopment programs and to encourage many small localities to participate in the program. By April 30, 1960, some forty-nine localities had entered into contracts with the state for specific redevelopment projects.

Under this program the state will make grants to localities to assist them in planning redevelopment projects and to help them meet their local one-third share of project costs. The planning advances have been used to speed up the planning

[15] N.Y. PUB. HOUSING LAW § 73.
[16] PA. STAT. ANN. tit. 35, § 1664 (Supp. 1959).

process. Even though a locality may receive federal advances to undertake the planning of a redevelopment project, the state established a policy of making planning grants at the time the locality submitted its application for a planning advance, on the theory that the delay between application and approval by the federal government was so great that valuable time was lost.

On grants to help the locality meet its one-third share of project cost, the state has placed but one monetary limitation—namely, that the money spent by other state agencies and claimed as a local noncash grant in aid by the locality be deducted when computing the state's share of half the local contribution.

The program is administered by the Bureau of Community Development of the Pennsylvania Department of Commerce, and it has been administered wisely and well. For the most part, the state agency relies upon federal review of the projects rather than establishing its own set of technicians. If the federal government approves the project, the state goes along.

A third type of grant just recently established under this program is a grant for "core studies." These grants, which are for the purpose of studying and planning "core areas" or downtown areas, are made before a locality submits an application to HHFA for a specific downtown project. The state will match the amount the locality will spend on such studies, and this grant is credited as part of the state contribution to the first project undertaken within the core area.

In making grants for these core studies, the state is requiring the planning consultants to make forecasts or projections of population, financial activity, employment, traffic, and the like. Thus they are designed to require a city to undertake a thorough analysis of its downtown area. As a result, Pennsylvania cities will be in an advantageous position to make use of federal funds for downtown projects.

E. Analysis of State Programs

There is little question that localities need financial assistance to undertake redevelopment projects, and state aid in this field can provide welcome assistance as well as an important stimulus. This is particularly evident in the comprehensive and forward-looking program undertaken by Pennsylvania. It is unfortunate that more states have not adopted programs of this nature, for the effect can be far-reaching in the redevelopment of urban areas, particularly in the smaller community.

The smaller community is hard pressed to generate the funds needed to undertake a redevelopment program, and "seed money" provided by the state can do much to make the program feasible. It is here also that the states can provide encouragement through the provision of technical assistance. If the state agency could maintain a staff of technicians, not large in number, to give guidance to the smaller localities who lack the resources to employ well-trained people in this field, those smaller localities could be fortified with the "know-how" to undertake urban renewal programs. Technical assistance and the use of state grants to encourage cities

to undertake projects and studies that will help them understand their city and its needs could achieve a considerable increase in urban renewal activity. The adoption of such programs, however, will first require a recognition on the part of state legislatures of the importance of their urban areas.

With any kind of financial assistance, however, goes some degree of control; and it is only natural to expect the state to exercise a review function if it is to grant financial assistance. There is always the tendency to second-guess the decision of the locality when the state's money is being used to help finance the project. Pennsylvania's practice in this respect has been exemplary. With a detailed federal review of projects, the state has rightly concluded that an additional detailed review is unnecessary and has relied upon the competence of the federal officials. As a result, the program has provided the stimulus and the needed financial assistance without imposing another level of governmental review. The danger, of course, is that state agencies will not exhibit the admirable restraint shown by Pennsylvania.

With a program as complex as urban renewal, the imposition of an additional level of detailed governmental review would encumber it to the point where achievement would be most difficult. Local review by the city council, citizens' committees, the planning commission, and others is already heavy. This is topped by a detailed federal review and a measurement against detailed federal requirements. A third, state-level review in any detail would make the program unwieldy.

In discussing the role of the states in providing financial assistance for urban renewal, some mention should be made of the proposal advanced that the states assume all or a portion of the federal grants for urban renewal. If this were to come about, the program would be reduced tremendously. The states have their own financial problems and are in no shape to provide the kind of grant money necessary to keep the program rolling. Present state grants are made on the basis that their cities are financially unable to meet the entire local cost of the program, and thus they are willing to supplement federal aid to move the program along. This is where state aid is needed; it cannot become a substitute for federal aid.

III

LOCAL GOVERNMENTAL ASSISTANCE

Unfortunately, many local officials look upon urban renewal as essentially a real estate program—a program where clearance is the objective and where the operation is limited to acquiring property, relocating families, demolishing structures, installing public improvements, and selling the cleared land to a developer. There is some limited recognition of the importance of cooperation from the various municipal departments that are involved in the operation, but the really important role of these peripherally involved departments is not emphasized. As a result the area where local government can provide the greatest assistance is an area where local government falls far short of its potential.

It has become a truism to say that urban renewal is a complicated program. It

is! But this is all the more reason for concentrating on its complexities and solving the complex problems. Too often, instead, the statement is accepted as an excuse for ignoring the problems and producing inadequate solutions.

For the first time, local governments are dealing with areas—not with a particular, easily defined project. They are improving an entire area—not just building a street, developing a park, or changing street lights. Cities should be concentrating and coordinating their efforts in these areas; in truth they are not. Urban renewal is but another department or agency. The departments function as always. There is no hard, driving direction to achieve a coordinated city program in an urban renewal area.

For urban renewal is far more than acquisition, relocation, clearance, and disposition. It is the creation of a new area in a new image, or the remolding of an old area in a new image. Creation and remolding do not result from clearance and rebuilding alone. They result from concomitant municipal activities whose absence or misapplication can destroy the image.

And redevelopment and rehabilitation cannot be carried out by private developers acting within a governmental framework similar to that found in the development of new subdivisions. The city itself must be a partner to the development, assisting the operation wherever possible, for urban renewal uncovers problems unfaced by the subdivision developer, and these problems are costly in time and money if public help is not granted.

There are three basic areas where the city has lagged far behind its obligations in providing assistance to urban renewal. These may be classified generally under the heading of aesthetics, zoning, and administration.

A. Aesthetics

One must start with the premise that the city's objective is the creation of new urban areas with decided improvement over standard urban living patterns. If this were not the premise, if we were content with perpetuating that which we now have, the lift would leave the program, the drive to achieve beauty and livability would be gone. And we would be misusing our effort and money.

So one starts with the premise that we are aiming high and that our standards should be high. And we find, fortunately, that architecture is playing an important role and that America's best architects are involved in urban renewal. They strive to create beauty and they strive to create urban livability. And in many instances, they have been successful.

However, on the public side, one finds too often an unawareness of this objective. One finds a disinclination to produce public structures of any distinction because of the controversy such a structure might create, or because aesthetics plays no role in the design or the objective. New schools in redevelopment areas rise adjacent to well designed buildings; yet little thought is given to creating architecture of comparable quality. The redevelopment agency frequently selects a redeveloper on the basis of

the design submitted by his architect, but the city may select the architect for the new school on grounds unrelated to design ability.

This criticism is not limited to new schools. It applies to nearly all public structures in renewal areas. This drive for design excellence stays with the redevelopment agency and is not transmitted to other city departments. The great interest in creating a desirable new area is not shared by the rest of the city government.

So the great design effort becomes diluted. The well-designed private structures share the area with the indifferently designed public structures. It is strange that this is so since it has been the private builder who has been criticized severely for his unimaginative buildings. But now the private builder leads the public.

Aesthetics does not apply just to structures. It applies also to such items as street lighting, where the traffic department wants to install modern, high, very bright street lights in an an area that is supposed to be a quiet, residential community. But lighting standards are measured not by aesthetics but by standard "advanced" design. The character of the area is not considered.

Then there is the recreation area and the standards applied to determine its design. In an area where one expects many adults, the need is for adult recreation. But the design is standard for the children's playground—large areas of asphalt, no tennis courts, and a high metal fence surrounding the whole. The fence cannot be covered with ivy for it must be painted every given number of years. A hedge serves not as well (one can crawl through it), so it is discarded. The recreation space is designed with little relation to the kind of area it is to serve. No direction, no vision, has been given to assist in the creation of a new kind of urban area.

And then there are the streets—streets that are minor and slow-moving must be widened to meet standards for much greater movement, and with their widening come down the trees. Little thought is given to the preservation of the trees that can provide much of the area's charm and attraction. The standard must be applied. There is no over-all controlling design that directs the other city departments in the installation and design of their facilities.

Somehow this direction and over-all design must be imparted to the other city departments. They must realize that an area is being rebuilt—not just a new school being built, or a recreation area designed, or a street being resurfaced. They must somehow be made to see that the design of what they build is a part of the design of the area being created. The city must create the design objective and must insist that these objectives be observed by all city departments, as well as by the private developer. Only a few cities now pay adequate attention to comprehensive design.

B. Zoning

The antiquity of the average city's planning laws and procedures creates an obstacle to urban renewal that frequently prohibits the attainment of the urban renewal objective. Zoning is the major villain. Designed to meet the planning objectives of the thirties and written for the single lot and its protection from adjacent

users, it is unsuited for the planned renewal area. Zoning is a major stumbling block to achieving the objectives of large-scale urban renewal.

Eli Goldston and James H. Scheuer have gone into this subject in penetrating detail in their recent article "Zoning of Planned Residential Developments."[17] They emphasize the difficulty of achieving the kind of urban design proposed by major urban designers for urban redevelopment projects under the rigid, zoning ordinances in most cities. The cumbersome side-yard requirements, setbacks, building envelope, space between buildings, and so forth, dictate the design of these areas, rather than the designer.

Good design in these redevelopment areas has been achieved in spite of the zoning ordinances by various means, usually by appeal to the board of zoning appeals or its counterpart. In some instances, the zoning ordinances have been amended to permit the design proposed. In Washington, D. C., the redevelopment plan takes precedence over the zoning ordinance.[18]

The difficulty of living within the framework of the zoning ordinance is apparent. Since it is designed for the single lot and since it reflects a philosophy of segregation of uses and housing types, it clearly restricts a development which is large-scale—that is, designed as an area, rather than as a series of buildings on individual lots, and which is based upon a philosophy that seeks to mix uses and housing types as part of the design. The acceptance of this philosophy is general among planners today, and yet the zoning ordinance, which is the planner's major tool in urban development, precludes the achievement of this philosophy.

Goldston and Scheuer suggest as a remedy the planned development district, a device, as they point out, employed by only half of the larger cities in the United States. Their analysis of those ordinances which include a planned development district indicates in many instances that they are cumbersome; and these writers have proposed a model provision that could be adopted as an amendment to most zoning ordinances. Their model limits such districts to residential districts, and they rely upon a board of zoning appeals to make the final decision as to the acceptability of the proposed planned development.

If planned renewal areas are to be developed in patterns of new urban design, evidently a device is essential to override the rigidity of the zoning ordinance. The planned development area provision is such a device. Of necessity, it must rely upon the judgment of local officials if flexibility is to be achieved; for, if specifics are to be excluded, judgment must be substituted. This creates a vehicle that will permit new urban design and planned renewal areas, but it does not guarantee that the judgment of the final arbiter will be sympathetic to the concept of the planned

[17] Goldston & Scheuer, *Zoning of Planned Residential Developments*, 73 HARV. L. REV. 241 (1959).

[18] See opinion of District of Columbia Corporation Counsel, Vernon E. West, submitted to the Board of Commissioners Feb. 2, 1956. His opinion is summed up in this sentence: "Accordingly I can only conclude that in a given project area the redevelopment plan prevails over any existing or proposed Zoning Regulations."

district. This can be achieved only if the city insists that those who make the judgments reflect this kind of planning philosophy.

Specifically, the planned development provision of the zoning ordinance should not be limited to residential development, since many renewal areas are nonresidential and require area-wide design as much as do residential areas. It would also seem best to place the final design decision in the hands of the planning commission, rather than the board of zoning appeals. The latter body is usually more limited in its appraisal of planning concepts and deals with small-scale, individual problems rather than large-scale developments. Also, it does not have a planning staff comparable to that of the planning commission. Adoption by the city council may be a necessary legal step, but the procedure should not be encumbered by introducing the zoning board.

Such a zoning provision should also give the final arbiter considerable latitude in establishing over-all densities, land use, coverage, and the like, rather than try to spell out certain limits or standards in the ordinance itself. The mathematical standards upon which zoning ordinances rely so heavily are themselves judgments applied to individual lots on a city-wide basis. They have no real validity for judging the design of a large area.

The renewal plan itself usually cannot serve in the capacity of the design for a planned area, for the renewal plan should be a general plan permitting the designer considerable flexibility. Or, if it is a detailed, rigid plan, then it will contain within itself the kind of zoning regulations that inhibit good design. The planned area provision must provide for the review of a specific design which will show location of buildings, heights, uses, and so forth. It is in the review of this specific design that the city assures itself that its basic objectives are met. The burden of proof is upon the designer. The city, however, should apply the standards of function and achievement, rather than the mathematical standards of the zoning ordinance, in reviewing the proposal.

Without this kind of flexible planning device, the cities will continue to impede new ideas in urban design. By means of this flexible planning device, the cities can provide a procedure that permits achievement of new heights in urban design. It is through such a device that the city can make a substantial contribution to the urban renewal program.

C. Administration

The zoning question has been treated separately since it is of such importance, but it is also a part of urban renewal's local administrative apparatus. And this apparatus is something to behold. It is an apparatus unsuited to the renewal operation and one that costs the city dollars and time. Its remolding into an efficient and effective procedure is one other way in which the city can contribute to the urban renewal program.

But before an effective apparatus can be adopted, the city's administrative organization must understand the urban renewal process and be sympathetic to its ob-

jectives. Too often the administrative heads give only lip service to urban renewal, for frequently it means that the procedures to which they have become accustomed must be altered and that their compartmentalized objectives must often be modified to meet the larger objective of the renewal plan. By reason of the present attitudes in the hierarchy of most cities, the department head can frequently exercise a veto power when he disagrees with the plan as it relates to his particular department.

Then, too, the philosophical objective of the renewal plan is frequently opposed by some of the city's civil servants, and a discrediting of the whole operation takes place in a quiet way within the city hall. This independence and lack of rapport makes the task of creating a renewal plan and getting it developed very difficult, frustrating, and time-consuming.

However, that this should be the case is not strange, for urban renewal presents an entirely new process to the city and its administrative heads. It requires action by nearly all city departments in one way or the other, rather than the execution of a project that is controlled by just one department. There is, of course, some coordination among departments for some city activities; but under urban renewal, where an entire area is being renewed, each department plays a role. Traffic, streets, fire, police, schools, parks, sewers, water—all these must be fitted together to create a renewal plan. Each department has rather fixed ideas of what it wants to do and the standards that should be applied; more often than not, the timing and standards conflict. This is particularly true in regard to standards where the urban design is new and different.

So the city must address itself to the administrative machinery of urban renewal and establish strong leadership to achieve the objectives of the urban renewal plan. It cannot permit each administrative head to exercise veto power, and it must establish a machinery that puts the renewal plan objective above the objective of any particular department.

This has not gone unnoticed in several cities, although generally most cities have not yet organized themselves for an effective renewal program. New Haven, with a development coordinator who is in charge of the renewal program as well as other development aspects of the city's activities, has produced an effective urban renewal organization. The power and drive of the mayor has, of course, made such a strong renewal operation possible.

Philadelphia has also established the machinery for an effective organization, although it has not been able to function with the same efficiency as has New Haven. Baltimore has initiated the single-department idea—or rather almost the single-department idea—and has put it into effect with a new and almost all-inclusive agency. Obviously such an agency cannot perform all the functions required of many city departments. Yet such an agency does exercise the urban renewal operating functions such as code enforcement, clearance, and relocation, and also has sufficient importance to obtain the coordination and cooperation necessary from other city departments.

Baltimore, in fact, undertook a special study of this organizational question and called upon the best experts in the field to produce a solution. This study is worth review by any municipality interested in improving its organization for urban renewal. In addition to providing a proposal for an urban renewal organization, the study analyzes cogently the administrative problems confronting urban renewal. Many passages are worth quoting, but the following is particularly appropriate:[19]

> The internal problems facing each of the agencies engaged in urban renewal have been further complicated by the extraordinary need for coordination between them. At least a dozen different agencies, departments, and bureaus in Baltimore's municipal government now have some interest in urban renewal. Any enforcement effort can generate sustained community improvement only if it is coupled with improvements in municipal services, the installation of needed community improvements, the elimination of hopelessly substandard units, and the active participation of the residents of the area affected. This means that all departments of municipal government must participate actively, aggressively, and with sympathy and understanding in a total program aimed at the rejuvenation of a neighborhood.

It is in this field of administration that the city can contribute greatly to the progress of urban renewal. Administrative rejuvenation requires the direction of a strong leader, an executive who has the authority to prevent established department heads from vetoing the process that will make urban renewal work.

IV

SUMMARY

Unquestionably one of the major assists to urban renewal by the states is in the provision of state grants to help cities meet the local costs of the program. Such assistance provides a considerable stimulus to the program and gives recognition to the state's responsibility to assist financially in the rejuvenation of its urban areas. Too few states have recognized this responsibility.

The states can also provide some assistance and stimulus by adopting legislation permitting cities to utilize various devices to assist them in their urban renewal programs. Although the use of tax allocation bonds is helpful, it is basically a device to circumvent existing state limitations on borrowing power and procedures. State legislation granting municipalities greater authority in borrowing and establishing less rigid referenda requirements could achieve the same result. Tax abatement provisions, on the whole, are an anachronism—a holdover from the thirties—and should be re-examined if they are to be used. Their value is doubtful.

It is to themselves, however, that the cities should look for improvement in the urban renewal program. Most cities, not recognizing the basic difference in the development aspects of the two programs, use the same approach for urban renewal programs as is used for public housing projects. Cities are also using an admin-

[19] REPORT OF THE BALTIMORE URBAN RENEWAL STUDY BOARD TO MAYOR THOMAS D'ALESANDRO, JR., 5 (1956).

istrative machinery geared to the installation of public improvements rather than the remaking of large areas, and this machinery is demonstrably both inadequate and detrimental to the achievement of urban renewal objectives. Although cities can legitimately and with justification look to the federal government for financial assistance, they have been somewhat less than effective in looking to themselves for self-improvement in the administration of the program.

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